SUBJECT

CONTROLLING STATUTE, RULE, OR POLICY
U.S. Constitution Amendment I
SD Constitution Art. VI § 5 – Freedom of speech
SDCL § 3-6C-19 – Freedom of Speech of Officers and Employees
BOR Policy 3:3 – Freedom of Speech
BOR Policy 3:4 – Student Code of Conduct
BOR Policy 6:13 – Facilities Use by Private Parties

BACKGROUND / DISCUSSION
During the June 2018 Board meeting, a Free Speech Roundtable was scheduled with a number of invitees who provided both written and oral comments on a variety of system and institutional policies affecting free speech. Board of Regents staff worked with institutional representatives to make necessary revisions to BOR policies to address issues/concerns that were raised by various constituent groups.

IMPACT AND RECOMMENDATIONS
Changes have been made to seven BOR policies to provide greater clarity for institutional leadership as they manage freedom of speech issues on their campuses. AAC was given the opportunity to review the policies during their August 2018 meeting, and subsequent revisions have been made following engagement with Board leadership, campus general counsels, and presidential feedback.

ATTACHMENTS
Attachment I – BOR Policy 1:17 Harassment Including Sexual Harassment
Attachment II – BOR Policy 3:3 Freedom of Speech
Attachment III – BOR Policy 3:4 Student Code of Conduct
Attachment IV – BOR Policy 3:18 Recognition and Funding of Student Organizations
Attachment V – BOR Policy 4:21 Political Activity
Attachment VI – BOR Policy 6:13 Facilities Use by Private Parties
Attachment VII – BOR Policy 7:1 Acceptable Use of ITS

DRAFT MOTION 20181002_5-B(1):
I move to approve the first reading of the proposed revisions to BOR Policies 1:17, 3:3, 3:4, 3:18, 4:21, 6:13, and 7:1.
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Harassment including Sexual Harassment

NUMBER: 1:17

______________________________________________________________

1. Educational institutions play a special role in preparing students to lead the complex social organizations through which businesses and professions operate and through which free people govern themselves. Students must be taught, and they must be shown through the example given by institutional employees, that stable, effective and prosperous social organizations observe norms of conduct under which all participants are expected to treat one another civilly and to carry out their respective tasks in a constructive and informed manner. Complex social organizations derive their strength from the cooperation of those who participate in them. By virtue of their special role in preparing future generations of leaders, educational institutions have a particular concern with conduct that subjects members of the institutional community to harassment, as herein defined, on the basis of sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information or veteran status, on any other status that may become protected under law against discrimination or on any other grounds. Such conduct destroys the bonds of cooperation and common purpose on which society rests by demeaning some members of the community, and, it cannot be tolerated in an institution whose very purpose is to shape the skills and conscience of the rising generations. For this reason, the Board strictly proscribes harassing conduct, and those members of the institutional community who have indulged in it shall be subject to discipline pursuant to Board Policy 1:18 or Board Policy 3:4.

2. Harassment on any grounds, directed against individuals, is proscribed.

A. Sexual harassment in either of its recognized forms is proscribed:

   1) Sexual harassment may 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:

      a. Submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's participation in, or use of, an institutionally sponsored or approved activity, employment or resource; or

      b. 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.

2) Sexual harassment may also be established by showing participation in the creation of an intimidating, hostile or demeaning environment established under § 2(B) below.

B. Harassment on the basis of sex, race, color, creed, religion, national origin, ancestry, citizenship, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, veteran status or harassment on any other status that may become protected under law against discrimination or on any grounds, directed against individuals, may be established by showing,

1) 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 the individual’s ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.

a. Sexual assault, as described in Board Policy No. 1:17.1, or animus-based assault that would constitute a hate crime under state or federal law, or involving conduct towards any individual otherwise protected from harassment under this policy that would constitute a hate crime if directed towards a person protected under state of federal hate crime law, will satisfy the requirement that the assailant’s conduct creates an objectively and subjectively intimidating, hostile or demeaning environment that substantially interferes with his or her ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.

b. In most other cases, harassment consists of more than casual or isolated incidents.

i. 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.

ii. 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.

iii. 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.

iv. If the victim does not subjectively perceive the environment to be hostile, the conduct has not actually altered the conditions of participation and there will be no violation of this policy.

v. 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.

2) 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.

3) Reasonable directions and admonitions by duly authorized institutional agents as to time, place and manner in which employees or volunteers perform assigned responsibilities, students carry out educational assignments or program participants engage in sponsored activities do not constitute prima facie evidence of harassment.

3. The chief executive officer of each institution is responsible for the enforcement of this policy and may delegate the necessary authority to the appropriate campus administrator.

A. Enforcement policies shall provide, at the minimum, for the following:

1) Posting of notices to alert students, employees and others of the institution's policies concerning harassment, including its assurance that persons who bring complaints of discrimination and persons who participate in the investigation and disposition of such complaints will not be subject to harassment, interference, intimidation, or retaliation;

2) Posting of notices informing students, employees and others of the steps that they must take in order to communicate complaints or concerns to the institution pursuant to Board policy 1:18, including a clear and accurate identification of the person or persons currently serving as the institution's
Title IX/EEO coordinator or deputy coordinators; and

3) Sponsoring educational programs for members of the campus community to assure that they are informed of their rights and obligations under this policy and to assist them in understanding the various forms that harassment may take, the effects it has on its victims and the ways in which it interferes with the proper operation of social organizations and society at large.

B. In addition to the procedures compliant with Board Policy No. 1:18, each institution will establish a procedure to encourage persons who have been subjected to unwelcome conduct of a sexual nature, whether or not rising to a level that constitutes harassment as defined in this policy, to contact the Title IX/EEO coordinator designated pursuant to Board Policy No 1:18(7).

1) Upon receipt of such a report, the Title IX/EEO coordinator will meet with the individual to discuss the incident, to reiterate the institution’s commitment to preventing harassment and the protections afforded under Board policy, and to assess whether the conduct that prompted the report might involve prohibited harassment.

2) If the Title IX/EEO coordinator concludes that the conduct may involve prohibited harassment, the coordinator will initiate proceedings under that chapter.

3) If the Title IX/EEO coordinator concludes that the conduct, though unwelcome, did not involve prohibited harassment, the coordinator will inform the person of the resources that the institution may be able to provide to assist the person to resolve concerns with the individual whose conduct prompted the report or otherwise to assist the person to become familiar with strategies that may assist in avoiding or responding to such conduct.

a. If the reported conduct, while not yet harassment, was targeted at a specific person or persons, was abusive, and served no bona fide academic purpose, the Title IX/EEO coordinator will contact the individual whose conduct prompted the report to discuss the conduct and its relation to federal and state law and to Board and institutional policies.

   i. Before initiating the contact, the Title IX/EEO coordinator will inform the person who made the report that the contact will be made and will explain that the institution will stress the prohibition against retaliation and will avoid making an express disclosure of confidential information.

b. If the reported conduct was not targeted at a specific person or persons,
the Title IX/EEO coordinator will discuss with the person who made the report, options to contact the individual whose conduct prompted the report, with or without the assistance of person who made the report, to discuss the implications of the conduct. The institutional, where appropriate, Title IX/EEO coordinator will also contact the institutional official responsible for the individual whose conduct prompted the report.

i. The Title IX/EEO coordinator will determine whether the circumstances require that the institution contact the individual whose conduct prompted the report or whether other action may be necessary to assure that the individual understands the obligation to avoid harassment and how certain forms of conduct may interfere with the ability of others to participate fully in institutional employments and programs.

SUBJECT: Commitment to Freedom of Speech

NUMBER: 3:31:32

A. PURPOSE
To express the Board’s commitment to the principles of expression protected by the First Amendment to the U.S. Constitution.

B. DEFINITIONS
None

C. POLICY
The Board and its institutions shall ensure the rights have a long history of commitment to the principles of free speech and expression and shall encourage the timely and rational discussion of topics whereby the ethical and intellectual development of the student body and general welfare of the public may be promoted.

Freedom of expression includes the right to discuss and present scholarly opinions and conclusions on all matters both in and outside the classroom without Board or institutional discipline or restraint. This freedom includes the right to speak and write as a member of the institutional communities governed by the Board or as a private citizen without Board or institutional discipline or restraint, on scholarly matters, or on matters of public concern. The Board and its institutions are committed to these principles and provide all members of their community the latitude to explore ideas and to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the institution, the Board fully respects and supports the freedom of all members of the institutions’ community to discuss any problem or issue that presents itself.

The ideas of different members of the institutions’ community will often and quite naturally conflict, and some individual’s ideas will even conflict with the institutions’ values and principles. But it is not the proper role of the Board or the institutions to attempt to shield individuals from viewpoints they find unwelcome, disagreeable, or even deeply offensive. To be clear, the Board greatly values and is responsible for upholding a culture of civility at its institutions. All members of the institutions’ community share in the responsibility for maintaining a climate of mutual respect. Such a climate is essential to First Amendment principles of academic freedom and freedom in learning, as both principles rely on the
discursive order and restraint from disruption that civility demands of each of us. Yet, while
the manner in which ideas are conveyed may be uncivil and disrespectful, ideas, themselves,
are not. In other words, concerns about civility and mutual respect can never be used as a
justification for closing off discussion of ideas, however offensive or disagreeable those ideas
may be to some members of our institutions’ community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean
that individuals may say whatever, whenever, and wherever they wish. The institutions may
restrict expression that violates the law, that falsely defames a specific individual, that
constitutes a genuine threat or harassment, that unjustifiably invades privacy or confidentiality
interests, or that is otherwise directly incompatible with the functioning of the institution,
including any limited public or nonpublic forum it creates. In addition, the institution may
reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt
the ordinary activities of the institution. But these are narrow exceptions to the general
principle of freedom of expression, and it is vitally important that these exceptions never be
used in a manner that is inconsistent with the Board’s commitment to a free and open
discussion of ideas.

It is the Board’s fundamental commitment to the principle that viewpoints may not be
suppressed because the ideas put forth are thought by some or even by most members of the
institutions’ community to be offensive, unwise, immoral, or wrong-headed. Controversial
speech and robust debate are expected and valued at the institutions. The right to engage in
such expression is one of the rights protected by the United States Constitution. Indeed,
encouraging professional diversity in faculty and fostering the ability of members of the
institutions’ community to engage in such debate and deliberation in an effective and
responsible manner is an essential part of the institutions’ educational missions.

As a corollary to the Board’s commitment to protect free expression, and as suggested by the
above discourse on civility, members of the institutions’ community must also act in
conformity with the responsibilities of free expression. Although members of the institutions’
community are free to criticize and contest the views expressed on campus, and to criticize and
contest speakers who are invited to express their views on campus, they may not obstruct or
otherwise interfere with the conduct of the institutions or the freedom of others to express
views they reject or even loathe. To this end, the Board and the institutions have a responsibility
not only to promote a lively and fearless freedom of debate and deliberation, but also to protect
that freedom when others attempt to restrict it.

Accordingly, the Board will adopt and interpret policies consistent with this commitment and
institutions will ensure their policies and procedures uphold the commitment contained herein
and within the policies adopted by the Board setting forth reasonable time, place, and manner
restrictions.

This policy shall not be interpreted in any manner to mandate new funding by institutions to
ensure its enforcement.
FORMS / APPENDICES:
None

SOURCE:
(RR, 12:02, 1977); BOR March 1993.
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Student Code of Conduct

NUMBER: 3:4

1. Introduction

The Board of Regents and its Institutions are committed to creating and maintaining a productive living-and-learning community that fosters the intellectual, personal, cultural, and ethical development of its Students. Self-discipline and respect for the rights and privileges of others are essential to the educational process and to good citizenship.

A. Purpose of the Student Code of Conduct

The purpose of the Student Code is to educate Students about their civic and social responsibilities as members of the Institutional community. The primary focus of the Student conduct process is on educational and corrective outcomes; however, conduct sanctions such as suspension or expulsion from an Institution may be necessary to uphold community standards and to protect the campus community. Extensive, organized, serious, or repeated violations of this Student Code are taken into account when determining conduct sanctions.

B. Standards of Behavior

Attendance at an Institution is optional and voluntary. When Students enroll at an Institution, they voluntarily accept obligations of performance and behavior that are consistent with the Institution’s lawful mission, processes, and functions. In general, these obligations are considered much higher than the obligations imposed by civil and criminal law for all citizens.

By enrolling at an Institution, Students voluntarily accept responsibility for compliance with all Board of Regents and Institutional Policies, including but not limited to this Student Code.

C. Authority of an Institution over its Students and Organizations

1. Student conduct proceedings may be initiated in response to conduct prohibited by the Student Code:
   a. That occurs on Institutional Premises;
   b. That occurs at events officially sponsored by an Institution;
   c. That arises out of membership in the Institutional community; or
   d. That occurs elsewhere and that adversely affects an Institution, any Organizations, members of the Institutional community, or the pursuit of their lawful objectives.
2. Notwithstanding this Student Code, an Institution reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community. The Institution also reserves the right to extend any deadline contained in this Student Code for good cause with written notice to the parties of the delay and the reason for the delay.

3. For purposes of the Student Code, the default authority over the Student for Student conduct purposes will be determined as follows:
   a. For alleged misconduct that occurs on Institutional Premises, the Institution where the alleged misconduct occurred;
   b. For alleged misconduct that occurs at events officially sponsored by an Institution, the Institution that sponsored the event;
   c. For alleged misconduct that occurs elsewhere and that adversely affects an Institution, the Institution adversely affected;
   d. For alleged instances of Academic Misconduct, the Institution that offered the course;

4. For instances where multiple Institutions have a reasonable claim to authority over the Student for Student conduct purposes, the Senior Student Affairs Officer at the Institutions with a reasonable claim to authority shall determine the appropriate Institution to proceed with the Student conduct process. The decision should consider the location of the alleged incident, Complainant, Respondent, witnesses, and the practicality of conducting the Student conduct process at the different Institutions having a reasonable claim to authority. If the Senior Student Affairs Officers cannot agree, the System Director of Student Affairs will make a final decision.

5. Where Students are also employees, they may be subject to concurrent authority. Student conduct proceedings under this Student Code may be initiated irrespective of any action taken by an Institutional employer. However, when the Student employee has been subject to conduct proceedings as an employee, the findings that resulted from such proceedings will be considered in the Student conduct process as long as the standard used in such proceedings was preponderance of the evidence or higher.

D. Alcohol Amnesty

This section aims to remove the barriers that may prevent any Student from seeking emergency medical attention by providing an opportunity for the Institution to intervene in a caring and non-punitive manner. The goal is to reduce the potential risk of alcohol-related injuries or deaths, and increase the likelihood that Students will seek medical attention in crisis situations.

1. A Student who seeks emergency medical attention (or who has emergency medical attention sought on his/her behalf) for alcohol-related consumption, will not be sanctioned for violating alcohol consumption prohibitions found in the Student Code related to that incident, as long as the Student completes the following requirements:
a. Participates in an initial meeting with the Senior Student Affairs Officer; and

b. Completes all recommendations from the Senior Student Affairs Officer; and

c. Submits proof of completion of all recommendations, within the time frame designated by the Senior Student Affairs Officer at the initial meeting.

2. A bystander Student who has engaged in alcohol consumption and who seeks emergency medical attention for someone else or tries to actively engage in assistance for someone else for that person’s alcohol-related consumption, will not be sanctioned for violating alcohol consumption prohibitions found in the Student Code related to his/her own consumption but will be invited to meet with the Senior Student Affairs Officer.

3. The Institution will not pursue any disciplinary action related to any alcohol or drug consumption against any Student who has been sexually assaulted or sexually harassed, for his/her use of alcohol or drugs at the time of the sexual assault or sexual harassment.

4. Subsections D-1 and D-2 of this section will only apply to a Student who seeks emergency medical attention before police or Institutional employees or agents take any official action or intervention related to the alcohol consumption.

5. Alcohol amnesty does not preclude disciplinary action regarding other violations of the Student Code.

6. Alcohol amnesty only applies to the Institution’s Student conduct process. It does not apply to any criminal, civil or other legal consequence for violations under federal, state or local law.

7. Alcohol amnesty is not designed to protect or shield those students who repeatedly violate the Student Code. The Senior Student Affairs Officer may assess each situation on a case-by-case basis, denying the safeguards of alcohol amnesty if serious or repeated incidents prompt a higher degree of concern or response, which may include disciplinary action under this Student Code.

E. Relationship Between the Student Conduct Process and the Criminal Law Process

1. The Student conduct process is independent of any criminal or civil process. Therefore, a Student alleged to have engaged in conduct that would be a violation of this Student Code (whether such conduct could also be a violation of criminal or civil law) may face Student disciplinary action regardless of any criminal or civil process or their outcomes.

2. When the alleged misconduct includes allegations of Human Rights Violations, the disciplinary process will not be delayed except when law enforcement requests a delay to conduct the fact-finding portion of its investigation.

3. Determinations made or conduct sanctions imposed under this Student Code shall not be subject to change because criminal charges arising out of the same
facts giving rise to violation of this Student Code were dismissed, reduced, or resolved in favor of, or against, the criminal law defendant.

4. When a Student is charged by federal, state, or local authorities with a violation of law, the Institution will not request or agree to special consideration for that Student because of his or her status as a Student.

5. If the alleged violation of law also gives rise to Student disciplinary action under this Student Code, the Institution may advise off-campus authorities of the existence of the Student Code and of how such matters are typically handled under the Student Code.

6. The Institution will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law and in the conditions imposed by criminal courts for the rehabilitation of Student violators provided that the conditions do not conflict with any conduct sanctions imposed as a result of the Student conduct process, this Student Code, or Institutional Policies.

7. 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 any Student conduct process.

8. Individual Students and other members of the Institutional community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

9. When an employee of the Institution knows that a felony was committed and that knowledge is not privileged, such employee shall report the known facts and circumstances to law enforcement officials who have jurisdiction over the matter.

F. Interpretation and Revision

1. No provision of this Student Code shall be interpreted to deprive Students of rights guaranteed them under state or federal law.

2. Institutions must ensure that Institutional interests do not interfere with the impartiality of the Student conduct process.

3. Any question of interpretation regarding the Student Code shall be referred to the Senior Student Affairs Officer for final determination.

4. The Student Code should be reviewed periodically under the direction of the Senior Student Affairs Officers.

   a. If the review leads to a recommendation that Board Policy be modified, that recommendation and its supporting rationale shall be provided to the Institutional presidents and, if approved, forwarded to the Executive Director.

G. Institutions may choose to adopt Institutional Policies that are consistent with this Student Code.
2. Definitions

The following terms have the stated meanings in this Student Code, and are identified throughout the Student Code through the use of capitalization:

A. The term “Advisor” means a person of the Student’s choosing who has agreed to advise a Student throughout the Student conduct process. The Advisor may be a Faculty Member, staff member, Student, attorney, family member, or anyone else. The Advisor is limited to advising the Student directly, and is not permitted to speak to anyone else, or participate directly, in any hearing. Students should choose an Advisor who is available to attend any scheduled meetings or hearings because Advisor availability is not considered in scheduling meetings or hearings.

B. The phrase “Appellate Board” means any person or persons authorized by the Institutional president to consider an appeal from the Chair’s determination that a Respondent has or has not violated the Student Code or from the conduct sanctions imposed by the Student Conduct Officer.

C. The phrase “Board Policy” means the written policies of the South Dakota Board of Regents contained in the policy manual.

D. The term “Chair” means the Student Conduct Officer or the Senior Student Affairs Officer who:
   1. Is a member of the Student Conduct Panel;
   2. Is responsible for the proper operation of the hearing; and
   3. Has sole discretion to determine whether a Respondent has violated the Student Code, and if so, to impose appropriate sanctions.

E. The term “Complainant” means an individual who was allegedly injured by an alleged violation of the Student Code by a Respondent.

F. The term “Day” means Monday through Friday, except for holidays and other times when the Institution’s administrative offices are closed.

G. The phrase “Faculty Member” means any person hired by the Institution to conduct classroom or other academic activities.


J. 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.

K. The phrase “Institutional Official” includes any person employed by the Institution, performing assigned administrative or professional responsibilities.

L. 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.
M. The phrase “Member of the Institutional Community” includes any person who is a Student, Faculty Member, Institutional Official, any person employed by the Institution, a volunteer, or guest. A person’s status in a particular situation shall be determined by the Senior Student Affairs Officer.

N. “Notice” required by this Student Code shall be provided in writing via email to the Student’s official Institutional email account. Notice is deemed received the Day after it is sent by email.

O. The term “Organization” means any Student group that has been granted Institutional registration or recognition.

P. The term “Policy” means the written regulations of the Institution as found in, but not limited to, this Student Code, the Residence Life Handbook, the Graduate and Undergraduate Catalogs, and other official publications.

Q. The term “Reasonable Person” means a reasonable person under similar circumstances and with similar identities as the Complainant.

R. The term “Respondent” means a Student or Organization that is alleged to have violated the Student Code.

S. The phrase “Senior Student Affairs Officer” means that Institutional Official exercising primary authority over Institutional student affairs programs and operations, or designee.

T. 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, whether credit-bearing or not.


V. The phrase “Student Conduct Officer” means any Institutional Official authorized by the Senior Student Affairs Officer to:

1. Informally resolve an allegation by determining the facts and, if a violation is found, imposing a conduct sanction without the assistance of a Student Conduct Panel;

OR
2. Serve as Chair of the Student Conduct Panel;
3. Receive and consider the findings and recommendations of a Student Conduct Panel; and
4. Determine whether a Respondent has violated the Student Code, and if so, to impose appropriate sanctions.

3. Prohibited Conduct

The following list describes actions that detract from the effectiveness of an Institution’s productive living-and-learning community. Any Student found to have engaged, attempted to engage, or allowed or assisted another in engaging, in the following prohibited conduct is subject to the Student conduct process and conduct sanctions outlined in this Student Code. In instances where prohibited conduct contained in this policy is defined differently in another Board Policy or Institutional Policy, the definition contained in this policy shall be used to address prohibited conduct by a Student.

A. Acts of Academic Misconduct or Dishonesty

Honesty and integrity are core values at all Institutions. Faculty Members and Students are jointly responsible for maintaining academic standards and integrity in Institutional courses. In addition to any conduct sanctions imposed under this Student Code, academic consequences for academic misconduct may be imposed by the Faculty Member, including issuing a failing grade in the course. Any grade issued by the Faculty Member, whether as a result of academic misconduct or not, constitutes an academic evaluation and is not a conduct sanction imposed under this Student Code. All Faculty Members should report incidents of Academic Misconduct to the Student Conduct Officer.

1. Engaging in acts of Academic Misconduct, which means Cheating or Plagiarism.

   a. Cheating includes, but is not limited to, the following:

      i. Using any unauthorized assistance in, or having unauthorized materials while, taking quizzes, tests, examinations or other assignments, including copying from another’s quiz, test, examination, or other assignment or allowing another to copy from one’s own quiz, test, examination, or other assignment;

      ii. Using sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments;

      iii. Acquiring, without permission, tests or other academic material belonging to the instructor or another member of the Institutional faculty or staff;

      iv. Engaging in any behavior prohibited by the instructor in the course syllabus or in class discussion;
v. Falsifying or misrepresenting data or results from a laboratory or experiment; or

vi. Engaging in other behavior that a Reasonable Person would consider to be cheating.

b. Plagiarism includes, but is not limited to, the following:

i. Using, by paraphrase or direct quotation, the published or unpublished work of another person without full and clear acknowledgment;

ii. Using materials prepared by another person or agency engaged in the selling of term papers or other academic materials without prior authorization by the instructor; or

iii. Engaging in other behavior that a Reasonable Person would consider plagiarism.

2. Engaging in other conduct that a Reasonable Person would consider dishonesty relating to academic achievement, research results or academically related public service.

3. Furnishing false information or false representations to any Institutional Official, instructor, or office. Submission of false information or withholding information at the time of admission or readmission may make an individual ineligible for admission to, or continuation at, an Institution.

4. Forging, fabricating, altering, misrepresenting, or misusing any document, record, or identification, including misrepresentations of degrees awarded or honors received.

5. Tampering with the election of any Organization.

6. Claiming to represent, or act on behalf of, the Institution when not authorized to do so.

B. Disruption, Obstruction, or Interference with Institutional Activities

1. Disrupting or obstructing Institutional activities.

2. Classroom disruption, which is behavior that a Reasonable Person would view as significantly or repeatedly interfering with the instructor’s ability to teach the class or the ability of other Students to benefit from the instructional program.

3. Failure to comply with directions of Institutional, law enforcement, fire department, public safety contractors, or other government officials acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

4. Obstruction of the free flow of pedestrian or vehicular traffic.

5. Abuse of the Student conduct process, which includes, but is not limited to, any of the following:

   a. Falsifying, distorting, or misrepresenting information provided;
b. Making false allegations;
c. Attempting to discourage an individual’s proper participation in, or use of, the Student conduct process;
d. Harassment (verbal or physical) or intimidation of any person participating in the Student conduct process;
e. Failure to comply with any conduct sanctions imposed pursuant to this Student Code.

C. Misuse of Institutional Resources or Property, or Personal Property of Others

1. Tampering with fire and life safety equipment including, without limitation, fire alarms, sprinkler systems, first aid equipment, and laboratory safety apparatus.

2. Unauthorized taking of, damage to, or possession of property belonging to the Institution, another Member of the Institutional Community, or another person.

3. Unauthorized possession, duplication, or use of keys, access cards, or access codes to any Institutional Premises.

4. Unauthorized entry into, or use of, Institutional Premises.

5. Unauthorized possession, entry into, or use of Institutional equipment, software systems, or information.

6. Possession of firearms, stun guns, tasers, BB guns, switchblade knives, fixed-blade knives with a blade length of five (5) inches or greater, or any item that is designed or used to injure or harm another person, fireworks, explosives, or dangerous chemicals on Institutional Premises or at Institutional events, except as explicitly permitted by a Board Policy or an Institutional Policy;

7. Unauthorized use or abuse of technology, including, but not limited to:
   a. Unauthorized entry into a file or program 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 technology to interfere with the work of another Student, Faculty Member, or Institutional Official;
   e. Use of an Institution’s technology to send engaging in harassing or abusive messages;
   f. Use of technology to engage in unlawful activities, including those involving uses that infringe intellectual property rights;
   g. Use of technology to interfere with normal operation of an Institution’s technology or other system;
   h. Making, acquiring, or using unauthorized copies of computer files, violating terms of applicable software license agreements, or using the...
Institution’s technology network or system to download files in violation of copyright laws;

i. Attempting to circumvent data protection schemes or tampering with security;

j. Violating Institutional or Board computer use or internet policies.

D. Threat of Harm or Actual Harm to a Person’s Physical or Mental Health or Safety

1. Violence, which includes, but is not limited to, using or threatening to use physical force on or towards another person without that person’s permission, except in reasonable self-defense. The use of physical force includes both using one’s own body parts as well as using other items.

2. Brandishing, pointing, or using a knife, gun, or other weapon towards another person, except in reasonable self-defense.

3. Restraining or transporting another person without that person’s permission.


5. Harassment, which includes, but is not limited to:

   a. Conduct towards another person that has the purpose or effect of creating an objectively and subjectively intimidating, hostile, or demeaning environment that substantially interferes with the individual’s ability to participate in or to realize the intended benefits of an Institutional activity or resource; and

   b. 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 or resource.

6. Sexual Harassment, which is subjecting another person to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:

   a. Submission to such conduct is made either explicitly or implicitly a term or a condition of an individual’s participation in, or use of, an Institutionally-sponsored or approved activity or resource; or

   b. Submission to or rejection of such conduct by an individual is used as the basis for educational or similar decisions affecting an individual’s ability to participate in or use an Institutionally-sponsored or approved activity or resource.

7. Stalking, which is engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to fear for the person’s safety or the safety of others, or suffer substantial emotional distress.
a. “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

b. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

8. Hazing, which includes, but is not limited to, an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or as a condition for continued membership in a group or an Organization:

a. Is likely to, or would be perceived by a Reasonable Person as likely to, endanger the physical health of an individual or cause psychological discomfort or distress through treatment that a Reasonable Person would consider to be humiliating, intimidating, or demeaning;

b. Destroys or removes public or private property;

c. Involves the consumption of alcohol or other substances to excess; or

d. Violates any Board Policy or Institutional Policy.

The express or implied permission of the individual being hazed does not make the behavior acceptable. It is also a violation of this provision to solicit, aid, or attempt to aid another person in planning or committing Hazing.

9. Sexual Misconduct, which is any contact of a sexual nature with another person without that person’s consent.

Contact of a sexual nature includes, but is not limited to:

a. Touching the intimate parts of another person;

b. Touching another person with one’s own intimate parts;

c. Forcing another person to touch one’s own intimate parts; and

d. Exposing one’s own intimate parts to another person;

Intimate parts include, but is not limited to, genitalia, groin, breast, buttocks, mouth, or clothing covering the same.

Consent is defined as informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. If coercion, intimidation, threats and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated or impaired so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption or being asleep or unconscious. If a person is fifteen (15) years old or younger, there is no consent. Whether one has taken advantage of a position of influence over another may be a factor in determining consent. Consent to any one form of sexual activity does not imply consent to any other.
form of sexual activity. Consent to one sexual encounter does not imply consent to another sexual encounter. Consent may be revoked at any time.

10. Voyeurism includes, but is not limited to, any use of electronic or other devices to make an audio, video, or photographic record of another person without that person’s prior knowledge and without that person’s prior authorization when such a recording is likely to cause that person or a Reasonable Person injury or distress, or involves that person’s intimate parts or sexual conduct involving that person.

11. Invasion of Privacy occurs when:
   a. An individual views another person, without that person’s prior knowledge and permission, under circumstances in which the other person has a reasonable expectation of privacy; or
   b. An individual uses an audio recording device to record another person, without that person’s prior knowledge and permission, under circumstances in which the other person has a reasonable expectation of privacy.

E. Discrimination and Retaliation

1. Discrimination is excluding from, or treating another person differently than others in, Institutional activities on the basis of sex, race, color, creed, religion, national origin, ancestry, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, or veteran status. However, social fraternities and sororities that are exempt from taxation under federal law may maintain single-sex membership practices without violating antidiscrimination policies, as recognized by 20 U.S.C. 1681(a)(6), and the enforcement of such single-sex membership practices by Students does not violate this provision.

2. Retaliation is conduct that would make a Reasonable Person feel intimidated, or that interferes with, threatens, coerces, or otherwise discriminates against any individual because that individual reports or files a complaint alleging a violation of law, Board Policy, or Institutional Policy, or participates in any process in which the individual has a right to participate.

F. Housing and Living Groups

Violations of any rules imposed by Institutional housing or living groups are also violations of this Student Code.

G. Use and Misuse of Substances

1. The unauthorized manufacture, sale, possession, use, or consumption of alcohol, marijuana, or controlled substances by Students.

   However, possession, use, or distribution of alcohol, marijuana, or controlled substances is permitted on premises controlled by the Board of Regents when:
   a. Needed in conjunction with approved research activities;
b. Alcohol is possessed, used, or distributed in a lawful manner inside a designated residence hall facility occupied exclusively by upper-division and/or non-traditional Students who are at least twenty-one (21) years of age;

c. Alcohol is possessed, used, or distributed in a lawful manner on premises controlled by the Board of Regents that have been designated by the Institution’s president as places where such possession, use, and distribution may be permitted, subject to such conditions as the 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, 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 (or the legal age of use and possession in the applicable jurisdiction);

   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;

e. Prohibit the possession, use, or distribution of alcohol, marijuana, or controlled substances on premises controlled by the Board of Regents, except as explicitly permitted by Section 3.G.1 of this Student Code;

f. Establish conduct policies and sanctions regarding violations by individual members no less stringent than those set forth under Board Policies, except that limited use of alcoholic beverages is permissible as set out above; and

g. Require that a report be filed with the Senior Student Affairs Officer each semester identifying all actions taken pursuant to the Student conduct policies required in this Student Code;

3. Institutions may impose additional or more restrictive conditions on official recognition.

4. Organizations are also subject to the Board of Regents’ antidiscrimination policies set forth in Board Policy 1:18. However, social fraternities and sororities that are exempt from taxation under federal law may maintain single-sex membership practices without violating antidiscrimination policies, as recognized by 20 U.S.C. 1681(a)(6).

4. **Student Conduct Process**

   A. Allegations

   1. Allegations of misconduct may be reported against any Student by anyone. Allegations shall be directed to the Student Conduct Officer in the Office of the Dean of Students. The reporting party will disclose the facts that form the basis for the allegation, the identities of any other witnesses, and any other relevant information regarding the alleged misconduct.

      a. Allegations of Academic Misconduct will be reported to the Student Conduct Officer but are initially addressed through Board Policy 2:33.


         i. The investigator assigned must not have any actual or reasonably perceived conflicts of interest and biases for or against any party involved in the initial complaint. If the Institution determines that an actual or reasonably perceived conflict of interest does exist, another individual must lead the investigation on behalf of the Institution.
ii. The investigator assigned must be trained to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence, including both evidence that tends to suggest a violation and evidence that tends to suggest no violation, and take into account the unique and complex circumstances of each case.

iii. The investigator assigned should avoid using any investigative techniques or approaches that apply sex stereotypes or generalizations.

iv. Each party should be provided written Notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation.

v. The investigation should result in a written report summarizing the relevant evidence that tends to suggest a violation and evidence that tends to suggest no violation.

vi. The investigator assigned must make findings of fact and conclusions as to whether the facts support a Human Rights Violation.

2. The Student Conduct Officer shall make an initial determination whether the allegations, if true, would violate the Student Code. If the Student Conduct Officer determines that the allegations, if true, would violate the Student Code, the Student Conduct Officer shall conduct a pre-investigation inquiry to determine whether the allegations are credible. This process may include speaking with witnesses and reviewing any documentation.

   a. The Student Conduct Officer must not have any actual or reasonably perceived conflicts of interest and biases for or against any party involved in the initial complaint. If the Institution determines that an actual or reasonably perceived conflict of interest does exist, another individual must lead the investigation on behalf of the Institution.

   b. As to off-campus conduct, the Student Conduct Officer shall determine whether the incident adversely affects the Institution, any Organizations, members of the Institutional community, or the pursuit of their lawful objectives.

   c. Allegations of Academic Misconduct that are not informally resolved pursuant to Board Policy 2:33 will enter the Student conduct process here.

   d. Allegations of Human Rights Violations that are not informally resolved pursuant to Board Policy 1:18 will enter the Student conduct process here.

3. If the Student Conduct Officer determines that either (i) the allegations, if true, would not violate the Student Code or (ii) the allegations are not credible, then the Student Conduct Officer should inform the Complainant of this determination.
and inform the Complainant that the allegations may be re-submitted should additional information become available.

4. If the Student Conduct Officer determines that the allegations, if true, would violate the Student Code and determines that the allegations are credible and will be investigated, the Student Conduct Officer shall provide written Notice to the Respondent within fifteen (15) Days of receiving the report of alleged misconduct or notification from the Faculty Member of the need to address alleged Academic Misconduct through the Student Code.

5. The written Notice to the Respondent must include the following:
   a. The alleged behavior that would be a violation of the Student Code;
   b. The date and location of the alleged behavior;
   c. The section(s) of the Student Code alleged to have been violated;
   d. The name of the Complainant;
   e. A time to meet with the Student Conduct Officer to provide the Respondent with the opportunity to give his/her account of the incident leading to the allegation of misconduct;
   f. Information about the right to have an Advisor present throughout the Student conduct process;
   g. Information about both the informal and formal resolution processes;
   h. A time for a hearing to occur no earlier than ten (10), and no later than twenty (20), Days after this written Notice is deemed received to address any alleged violations that are not informally resolved;
      i. The minimum time limit may be waived by the Respondent.
      ii. The maximum time limit may be extended at the discretion of the Student Conduct Officer.

6. At the time that the written Notice to the Respondent is sent, a written notice shall also be sent to the Complainant containing information about the right to have an Advisor present throughout the Student conduct process, information about both the informal and formal resolution processes, and the time for the hearing to address any alleged violations that are not informally resolved.

7. The Student Conduct Officer will conduct an investigation of the allegations, which may include speaking with witnesses and reviewing any documentation. Only in instances where the Student Conduct Officer determines that there is sufficient evidence to establish that the Respondent violated the Student Code by a preponderance of the evidence will the allegations proceed to informal or formal resolution.
   a. For matters involving Human Rights Violations where an investigation was conducted pursuant to Board Policy 1:18, no additional investigation is required.
b. If the Student Conduct Officer determines that there is insufficient evidence to establish that the Respondent violated the Student Code by a preponderance of the evidence, the Student Conduct Officer will inform both parties of this fact and will cancel the hearing. This notification should also inform that parties that the investigation may be re-opened should additional information become available.

B. Interim Measures

In certain circumstances, the Senior Student Affairs Officer, or a designee, may impose interim measures that go into effect immediately, prior to a hearing before a Student Conduct Panel, and remain in effect until no longer needed.

1. Interim measures are intended to protect the interests of both the Complainant and the Respondent prior to a hearing. Interim Measures may include, but are not limited to, no-contact directives, residence modifications, academic modifications and support, Institutional work schedule modifications, interim residence suspension, or interim suspension. Interim Measures that restrict the ability of either party to discuss the investigation should be avoided, as they may inhibit the ability of either party to obtain and present evidence or otherwise to defend their interests. Written Notice of Interim Measures shall be provided to the party to whom the interim measures are directed.
   
   a. In circumstances involving allegations of dating violence, domestic violence, sexual assault, or stalking, interim measures must be provided upon the request of a Complainant if such measures are reasonably available.
   
   b. In fairly assessing the need for a party to receive interim measures, the Senior Student Affairs Officer, or a designee, may not rely on fixed rules or operating assumptions that favor one party over another, nor make such measures available only to one party.
   
   c. Interim measures should be individualized and appropriate based on the information gathered by the Institution, making every effort to avoid depriving any Student of his/her education.
   
   d. The interim measures needed by each student may change over time, and the Senior Student Affairs Officer, or a designee, should communicate with each Student throughout the Student conduct process to ensure that any interim measures are necessary and effective based on each Student’s evolving needs.

2. 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 an ongoing threat of disruption of, or interference with, the normal operations of the Institution.

3. During the interim suspension, the Student may be denied access to residence facilities, the campus (including classes), and all other Institutional activities or privileges.

4. A Student placed on interim suspension shall be given written Notice of Interim Measures, which shall include:
   a. The reasons for the interim suspension;
   b. The parameters of the interim suspension; and
   c. Information concerning the right to appeal the interim suspension.

5. Interim Suspension Appeal Process
   a. The Student must submit a written request for a meeting to the Senior Student Affairs Officer.
   b. The Senior Student Affairs Officer will schedule a meeting with the Student as soon as practical and no later than three (3) Days after receiving the written request. At this meeting, the Student is provided the opportunity to raise any objections to the interim suspension or to request alternative interim measures.
   c. The Senior Student Affairs Officer has sole discretion regarding interim measures.

C. Informal Resolution

1. The Student Conduct Officer may speak separately and individually with the Complainant and the Respondent to determine whether the alleged misconduct can be resolved through informal resolution.
   a. In matters involving allegations of Human Rights Violations, informal resolution may not take the form of having the Complainant and the Respondent be in the same room at the same time, unless both parties agree in writing.
   b. In matters involving allegations of Human Rights Violations, the Student Conduct Officer should consider whether the informal resolution is equitable and will end the misconduct, prevent its recurrence, and address its effects.

2. Informal resolution may be reached where:
   a. The parties involved mutually agree to a full resolution of the alleged misconduct that is acceptable to the Student Conduct Officer.
      i. This must be documented in writing and signed by the Complainant, Respondent, and Student Conduct Officer.
b. The Respondent waives a formal hearing by admitting to the misconduct and accepting the proposed conduct sanctions.
   
i. This must be documented in writing and signed by the Respondent and the Student Conduct Officer.
   
ii. This type of informal resolution is not available in matters involving allegations of Human Rights Violations.

3. Partial informal resolution may be reached where the Respondent admits to the misconduct but does not accept the proposed conduct sanctions. When this occurs, the process moves to formal resolution with the hearing being limited to the question of appropriate conduct sanctions.
   
a. This must be documented in writing and signed by the Respondent and the Student Conduct Officer.
   
b. In matters involving allegations of Human Rights Violations, the Complainant must also agree in writing to this partial informal resolution.

4. Informal resolution shall be final and the parties who agreed in writing to informal resolution waive any right to appeal otherwise available under Board Policy 3:4.

5. The Student Conduct Officer’s involvement in attempting to informally resolve the allegation of misconduct does not impact the Student Conduct Officer’s ability to later serve as the Student Conduct Panel or a member thereof in the formal resolution process.

6. Informal resolution may be reached at any time before the Chair issues any findings, conclusions, and, when a violation is found, conduct sanctions it determines to be appropriate through the Formal Resolution process.
   
a. If an informal resolution is reached, the Student Conduct Officer shall prepare written findings and conclusions, and any sanctions resulting from a violation during the informal resolution process. If the complaint included more than one allegation of misconduct, each allegation must have a separate decision.

D. Formal Resolution

1. If the alleged misconduct is not fully resolved through informal resolution, any unresolved matter proceeds to a hearing.

2. The composition of the Student Conduct Panel shall be determined as follows:
   
a. For matters where the Student Conduct Officer serves as Chair of the Student Conduct Panel, the Student Conduct Officer shall have sole discretion regarding whether the Student Conduct Panel includes:
      
i. Option 1 – only the Student Conduct Officer; or
      
ii. Option 2 – the Student Conduct Officer and any Institutional employee or employees or independent contractor authorized by the Senior Student Affairs Officer to determine whether a Student
has violated the Student Code and to recommend imposition of conduct sanctions,

b. For matters involving allegations of Academic Misconduct, the Student Conduct Panel must include at least one Faculty Member or academic administrator appointed by the Provost in the form described in Option 2 above.

c. Both the Complainant and the Respondent will be provided Notice of the identity of the member(s) of the Student Conduct Panel. Both parties may request in writing (and must include supporting information) that (i) the Student Conduct Panel include additional members (Option 2), and/or (ii) a Student Conduct Panel member be replaced due to an actual or reasonably perceived conflict of interest. Such requests must be submitted, in writing to the Senior Student Affairs Officer no later than twenty-four (24) hours after the Notice is provided to the party. The Senior Student Affairs Officer shall make a final decision as to these requests and will provide Notice to both parties of the decision.

3. Hearings shall be conducted by a Student Conduct Panel according to the following guidelines:

   a. Hearings shall be conducted in private. Witnesses other than the Complainant and the Respondent may only be present during the hearing while presenting their information.

   b. The Chair shall have sole discretion and final decision-making authority over the following:

      i. Whether an individual’s conduct interferes with the hearing and requires that individual’s removal;

      ii. Whether written information, materials, documents, and statements submitted are relevant and will be accepted for consideration by the Student Conduct Panel;

      iii. All questions about the interpretation of the Student conduct process; and

      iv. Whether to have separate or joint hearings when a hearing would involve more than one Respondent;

4. Neither the Complainant nor the Respondent are required to attend or participate in the hearing, and such decision will have no bearing on the question of whether the Respondent violated the Student Code.

5. The Respondent has no obligation to provide any information, materials, documents, or witnesses, or answer any questions and is presumed to not have violated the Student Code. The burden is on the Institution to gather sufficient evidence to reach a fair, impartial determination as to whether the alleged violation of the Student Code occurred.
6. If the Complainant or Respondent wants the Student Conduct Panel to review any materials or documents or wants to present any witnesses at the hearing, such materials and documents and/or witness lists must be submitted to the Chair by the following deadlines in order to be considered:

   a. In matters alleging Human Rights Violations, all materials and documents and/or witness lists must be submitted at least seventy-two (72) hours before the hearing. Additionally, a copy of the final report prepared by the Title IX/EEO Coordinator will be provided to the Complainant, Respondent, and the Student Conduct Panel members.

   b. For all other matters, all materials and documents and/or witness lists must be submitted at least twenty-four (24) hours before the hearing.

The Chair will promptly provide the other party and the Student Conduct Panel members a copy of any materials, documents, and witness lists submitted.

7. 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 two Advisors for each Student shall be permitted. The Advisor is limited to advising the Student directly, and is not permitted to speak to anyone else, or participate directly, in any hearing.

8. The Student Conduct Officer shall record the audio of the hearing.

9. Generally, the hearing will be conducted in the following order:

   a. The Chair will ask each individual present at the hearing to identify him/herself by providing his/her name and role at the hearing (e.g., Complainant, Respondent, Member of the Student Conduct Panel, etc.).

   b. The Chair will remind the Respondent:

      i. Of the materials that the Student Conduct Panel received prior to the hearing;
      
      ii. Of the right to have an Advisor present;
      
      iii. Of the right to refuse to speak as a witness against him/herself;
      
      iv. That the refusal to speak as a witness against him/herself will have no bearing on the question of whether the Respondent violated the Student Code;
      
      v. Of the alleged behavior that would be a violation of the Student Code; and
      
      vi. Of the section(s) of the Student Code alleged to have been violated.

   c. The Chair will provide the Complainant with the opportunity to engage in the hearing. If the Complainant agrees to engage, then:

      i. The Chair will provide the Complainant the opportunity to provide any additional relevant factual details that were not previously provided. The Complainant may choose to do so or may decline
and maintain the right to not provide information, materials, documents, or answer questions. The Complainant may decline but still present witnesses.

ii. The Chair will ask the Complainant to present any witnesses, who will be brought to the hearing one at a time, and ask questions of the witness.

iii. The Student Conduct Panel will then ask questions of the witness.

iv. The Chair will ask the Respondent for any questions for the witness. The Respondent will provide the Chair any questions in writing.

v. The Chair will ask the witness any questions provided by the Respondent that the Chair determines to be relevant.

vi. The Chair will ask the Complainant to present the next witness. The process described above shall repeat for each witness until the Complainant has presented all of its witnesses.

d. The Chair will provide the Respondent the opportunity to engage in the hearing. If the Respondent agrees to engage, then:

i. The Chair will provide the Respondent the opportunity to provide any additional relevant factual details that were not previously provided. The Respondent may choose to do so or may decline and maintain the right to not provide information, materials, documents, or answer questions. The Respondent may decline but still present witnesses.

ii. The Chair will ask the Respondent to present any witnesses, who will be brought to the hearing one at a time, and ask questions of the witness.

iii. The Student Conduct Panel will then ask questions of the witness.

iv. The Chair will ask the Complainant for any questions for the witness. The Complainant will provide the Chair any questions in writing.

v. The Chair will ask the witness any questions provided by the Complainant that the Chair determines to be relevant.

vi. The Chair will ask the Respondent to present the next witness. The process described above shall repeat for each witness until the Respondent has presented all of its witnesses.

e. The Student Conduct Panel may ask the Complainant and/or the Respondent whether s/he agrees to answer questions. The Student Conduct Panel may then ask questions of either or both parties who agree to answer questions.
f. The Student Conduct Panel will meet in a closed session to discuss and make its recommendation, which closed session shall not be audio recorded.

10. The Student Conduct Panel shall review all information and materials presented to it and shall decide by majority vote whether the Respondent violated the Student Code by a preponderance of the evidence (i.e., more likely than not). Decision-making techniques or approaches that apply sex stereotypes or generalizations should be avoided so that the hearing process proceeds objectively and impartially.

11. The Student Conduct Panel shall prepare written findings to support its determination. If multiple allegations of misconduct exist, a decision should be reached separately for each allegation. These written findings shall include:
   a. Concise statements of each factual finding;
   b. Brief explanations of whether and why the factual findings support a conclusion that the conduct either violated or did not violate the Student Code;
      i. These must address each factual element that must be satisfied to establish that conduct has violated the Student Code.
   c. Any initial, interim, or final decisions by the Institution; and
   d. If a violation is found, recommendations of appropriate conduct sanctions and supporting rationale for the conduct sanctions;

12. The Student Conduct Panel shall forward its written findings to the Chair. The Chair has sole discretion to adopt or reject any portion of the written findings.
   a. If any portion of the written findings are rejected, the Chair shall issue new written findings it determines to be appropriate for such portion(s), and will provide the Student Conduct Panel with an explanation for its decision.
   b. The Chair shall determine the effective date of any conduct sanctions imposed, which effective date should be on or after the exhaustion of the appeal as a matter of right. However, interim measures may remain in place, or be instituted, until the effective date of any conduct sanctions.

13. The Chair’s written findings and information about appeal rights, shall be provided to the Respondent. When FERPA allows, the Complainant will receive the permitted information simultaneously. See Section E.1 below for more information.
   a. In matters involving allegations of Academic Misconduct, the Chair’s written findings shall also be provided to the Faculty Member.
   b. In matters involving allegations of Human Rights Violations, the Complainant must also be provided information about appeal rights.
14. The audio record of the hearing shall be the property of the Institution and shall be maintained by the Student Conduct Officer. No other person may record the hearing.

   a. The audio record and its contents shall be confidential and may only be used for purposes of any appeals. Any person who discloses the contents of the audio record to parties not involved in the appeal shall be subject to conduct sanction.

   b. In the event of an appeal, the Respondent shall be given access to the audio record for purposes of preparing an appeal. When the alleged misconduct involves allegations of Human Rights Violations, the Complainant shall be given access to the audio record for purposes of preparing an appeal. Access shall be provided at such places and times as the Senior Student Affairs Officer may direct.

   c. Except as required by law, the Institution shall not be required to change the form in which the record is maintained.

E. Sanctions

1. Individual Conduct Sanctions

   a. In each case in which the Chair determines that a Respondent has violated the Student Code, the Chair shall determine and impose appropriate conduct sanction(s). Where a violation of Board Policy is established, and where a conduct sanction is mandated under Board Policy, that conduct sanction shall be imposed.

      i. Conduct sanction decisions must be made for the purpose of deciding how best to enforce the Student Code and should reflect a proportionate response to the violation.

      ii. In matters involving Human Rights Violations, the Chair should consider whether the sanctions are equitable and will end the misconduct, prevent its recurrence, and address its effects.

      iii. In matters involving Human Rights Violations, the Chair should consider the impact of separating the Respondent from his/her education before imposing a conduct sanction of suspension or expulsion.

   b. In matters involving allegations of Academic Misconduct that are informally resolved pursuant to Board Policy 2:33, the Student Conduct Officer will receive the information from the Faculty Member and shall determine and impose appropriate conduct sanction(s).

   c. Complainants shall be informed in writing and at the same time as the Respondent of any outcome and conduct sanctions imposed in the following circumstances:
i. When the conduct sanction involves remedial action that directly relates to the Complainant (e.g., a directive requiring the Respondent to not have contact with the Complainant);

ii. Where the allegations against the Respondent would also constitute a crime of violence or non-forcible sex offense as defined by FERPA; or

iii. Where the allegations against the Respondent would also constitute Human Rights Violations. In this circumstance, the rationale for the result must also be included.

iv. Where the Institution finds that a hostile environment exists, the Institution shall also inform the Complainant of other steps the Institution has taken to eliminate the hostile environment.

d. FERPA allows Institutions to disclose the final results of a conduct proceeding when the Chair determines that the Respondent violated the Student Code and that violation falls within the definition of a crime of violence or a non-forcible sex offense as defined by FERPA. For purposes of this subsection, “final results” means the name of the Respondent, the violation committed, and any conduct sanction(s) imposed by the Institution.

e. FERPA allows Institutions to inform the parents or legal guardians of a Respondent younger than twenty-one (21) years of age that the Respondent has violated Institutional Policies concerning the use or possession of alcohol or controlled substances.

f. The following conduct sanctions may be imposed upon any Respondent found to have violated the Student Code. More than one of the conduct sanctions listed below may be imposed for any single violation. Imposition of a conduct sanction may be delayed or suspended on such conditions as the Student Conduct Officer may prescribe.

i. Warning – A statement to the Respondent that the Respondent has violated the Student Code of Conduct.

ii. Probation – Probation is for a designated period of time and includes the probability of more severe conduct sanctions if the Respondent is later found to have engaged in any additional violation(s) the Student Code during the probationary period.

iii. Loss of Privileges – Denial of specified privileges for a designated period of time. The privileges of continued participation in Institutional activities, access to Institutional facilities or residences may be conditioned upon participation in or completion of educational programming at the Student’s expense.

iv. Fines – Monetary payments.
v. Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service, money, or material replacement.

vi. Educational Sanction – work assignments, essays, service to the Institution, community service, workshops, or other related educational activities.

vii. Residence Suspension – Separation of the Respondent from the Institution’s residence facilities for a definite period of time, after which the Respondent is eligible to return. Conditions for return to the residence facilities may be specified.

viii. Residence Expulsion – Permanent separation of the Respondent from the Institution’s residence facilities. A sanction of residence expulsion will take the form of residence suspension pending completion of the appeals process.

ix. Suspension – Separation of the Respondent from the Institution for a definite period of time, after which the Respondent is eligible to return. Conditions for return may be specified. A Respondent who has been suspended from one Institution may not enroll at another Institution until the period of suspension has ended.

x. Expulsion – Permanent separation of the Respondent from the Institution. A Respondent who has been expelled from one Institution may not enroll at another Institution. A sanction of expulsion will take the form of suspension pending completion of the appeals process.

xi. Withholding Degree – the Institution may withhold awarding a degree otherwise earned until the completion of the Student conduct process or the completion of all conduct sanctions imposed.

xii. Revoking Admission and/or Degree – the Institution may revoke admission to, or a degree awarded from, the Institution for violation of Institutional standards for obtaining admission or the degree, or for other serious violations of the Student Code committed by the Respondent prior to graduation.

g. 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.

h. Students enrolled in one Institution shall be held accountable for their conduct while visiting all other Institutions. Students may be required, as a condition of continued enrollment, to appear at the Institution where the alleged misconduct took place, at their own expense, for a conduct hearing and to answer allegations based on their conduct while at that Institution.

i. Any conduct sanction imposed by one Institution shall be effective at all other Institutions. A Respondent suspended at one Institution shall not be able to enroll at another Institution until the period of suspension has ended. A Respondent who has been expelled from one Institution may not enroll at another Institution.

ii. When a Respondent is brought forward on allegations of misconduct by another Institution, any conduct sanction issued after a finding of a violation shall be determined by the Institution that brought forward the allegations of misconduct. Suspension or expulsion may only be imposed after first consulting with the Senior Student Affairs Officer from the Institution where the Respondent is enrolled.

2. Organizational Conduct Sanctions

a. The following conduct sanctions may be imposed upon Organizations:

i. Those conduct sanctions listed above in Section 4.E.1.

F. Appeals

1. Appeal as a Matter of Right

a. The Respondent may appeal a decision reached by the Chair. In matters involving allegations of Human Rights Violations, the Complainant may also appeal a decision reached by the Chair. The appeal must be in writing and must be submitted to the Senior Student Affairs Officer no later than five (5) Days after Notice of the Chair’s decision is deemed received.

b. The written appeal must cite at least one (1) of the following reasons for review and must include supporting arguments and documentation as to why an appeal should be granted on those grounds.

i. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;

ii. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;

iii. The conduct sanction(s) imposed were not appropriate for the violation of the Student Code that the Respondent was found to have committed; and/or
iv. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.

c. An appeal shall be limited to a review of:
   i. The verbatim record of the initial hearing;
   ii. Supporting documents submitted as part of the initial hearing; and
   iii. Supporting documents submitted in support of the appeal reason(s)

d. The Senior Student Affairs Officer will provide the other party a copy of the appeal and a reasonable amount of time to submit any materials to be considered.

e. The Senior Student Affairs Officer will provide the Appellate Board with the materials submitted. The Appellate Board will review the materials submitted and provide a written recommendation to the Senior Student Affairs Officer as soon as practicable. The Senior Student Affairs Officer has sole discretion to adopt or reject the recommendation.
   i. In instances where the Respondent appeals a decision reached by the Chair, sanctions or conditions may not be increased, introduced for the first time, or extended.
   ii. If the recommendation is rejected, the Senior Student Affairs Officer will provide the Appellate Board with a written explanation for his/her decision.
   iii. The Senior Student Affairs Officer shall determine the effective date of any conduct sanctions imposed. The effective date of any conduct sanctions shall not be delayed pending any further appeals.

f. The Senior Student Affairs Officer’s written decision shall be provided to the parties, along with the Appellate Board’s recommendation and, if rejected, the Senior Student Affairs Officer’s written explanation.
   i. The Senior Student Affairs Officer may return the matter to the hearing panel for reconsideration or to the Title IX/EEO Coordinator for additional investigation, in light of the written decision.

2. Appeal to the President of the Institution

   a. The Respondent may appeal a decision reached by the Senior Student Affairs Officer. In matters involving allegations of Human Rights Violations, the Complainant may also appeal a decision reached by the Senior Student Affairs Officer.
b. The appeal must be in writing and must be submitted to the President’s Office no later than five (5) Days after Notice of the Senior Student Affairs Officer’s decision is deemed received.

c. The written appeal must cite at least one (1) of the following reasons for review and must include supporting arguments and documentation as to why an appeal should be granted on those grounds.

   i. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;

   ii. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;

   iii. The conduct sanction(s) imposed were not appropriate for the violation of the Student Code that the Respondent was found to have committed; and/or

   iv. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.

d. The President has sole and complete discretion as to whether to agree to review an appeal, including what materials to consider. However, the President will not consider any reasons for review that were not previously raised in the appeal to the Appellate Board.

e. If the President agrees to review an appeal, the President will provide the other party/parties a copy of the appeal and a reasonable amount of time to submit any materials to be considered.

f. The President will provide a written decision to the parties, and to the Senior Student Affairs Officer. The decision may be a substantive one, or may merely indicate that the President has declined to review the appeal.

   i. The President may return the matter to the Senior Student Affairs Officer or hearing panel for reconsideration, or to the Title IX/EEO Coordinator for additional investigation, in light of the written decision.

3. Appeal to the Board of Regents

   a. After exercising and exhausting all appeals available at the Institutional level, the Respondent may appeal a decision reached by the President. In matters involving allegations of Human Rights Violations, the Complainant may also appeal a decision reached by the President after exercising and exhausting all appeals available at the Institutional level.

   b. The appeal must be in writing and must be submitted to the Executive Director of the Board of Regents no later than thirty (30) Days after Notice of the President’s decision is deemed received. The appeal must include the following:
i. Supporting arguments and documentation;

ii. All documentation provided by the Institution, including, at a minimum, the President’s decision, the Senior Student Affairs Officer’s decision, and the Chair’s decision.

c. Written appeals that fail to include supporting arguments and documents, and the documentation provided by the Institution will be rejected.

d. An appeal submitted to the Executive Director that is not covered by subsection e) below may be considered by the Executive Director. In these instances, the Executive Director has sole and complete discretion as to whether to agree to review an appeal, including what materials to consider.

i. If the Executive Director agrees to review an appeal, the Executive Director will provide the other party a copy of the appeal and a reasonable amount of time to submit any materials to be considered.

ii. The Executive Director will provide a written decision to the parties, and to the President.

iii. The Executive Director may return the matter to the President, Senior Student Affairs Officer, or hearing panel for reconsideration or to the Title IX/EEO Coordinator for additional investigation, in light of the written decision.

e. An appeal submitted to the Executive Director must be considered by the Board of Regents where a Student has been expelled or suspended based upon alleged violations of Board Policy 3:4; or a disciplinary action allegedly deprived the Student of a right or privilege protected by a specific term or provision of Board Policy or state or federal constitution, law, or regulation.

i. The Executive Director will have fifteen (15) working days within which to attempt, at his or her discretion, a resolution through informal means.

ii. If no informal resolution has been effected within the fifteen (15) working days, the Executive Director will refer the matter to a hearing examiner for reconsideration pursuant to SDCL § 1-26 using the contested case proceedings. At the conclusion of the contested case proceedings, the hearing examiner will provide a recommendation to the Executive Director for the disposition of the matter by the Board.

a. Contested case proceedings may be conducted under protective orders entered pursuant to SDCL §§ 1-26-19 and 15-6-26(c).
b. The Board may return the matter to the President, Senior Student Affairs Officer, or hearing panel for reconsideration or to the Title IX/EEO Coordinator for additional investigation, in light of the written decision.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Recognition and Funding of Student Organizations

NUMBER: 3:18

1. Statement of Purpose

The “stability of a republican form of government” being the ultimate object of public education, SDC art. VIII, § 1, each institution will encourage students to participate in student organizations in order to harness the power of social interaction and experience to prepare students to shoulder the civic and social duties inherent in human society and essential to popular government. These activities, established to complement the formal curriculum, are offered to help students develop the degrees of moral judgment and applied intelligence they will need to serve as citizenry in a nation in which a free people is to govern itself.

Student organization activities complement the curriculum and prepare students to assume the responsibilities of citizenship in two broad, but distinct, ways.

First, operating and participating in formally chartered student organizations develops skills in organizational governance, decision-making, management and accountability, skills that must become second nature to all who lead and work in the complex institutions of commerce, charity and government whose effective, efficient operation undergirds the prosperity of all advanced societies.

Second, using means of communication to engage persons outside an organization hones the skills required to present information or ideas accurately and to reason well and persuasively, skills that must become second nature to those who persuade the disparate interests within society to accept the compromises that republican forms of government demand.

All student organizations will provide opportunities for the development of the skills in organizational government and operation. The activities conducted by some student organizations may focus primarily on engaging others in public dialog, although for many others such engagement may be an isolated or occasional event.
2. **Recognition of Student Organizations**

A. Each institution will develop and publish criteria for recognition of student organizations. These recognition criteria will require student organizations to operate under a formal set of articles that define the powers of the organization and describe how those powers may be exercised, just as articles of incorporation or constitutions define the powers of commercial, nonprofit or governmental entities and describe how these powers may be exercised. Each institution will establish rules for budgeting, custody, expenditure and audit of organization funds, and the recognition criteria will require that recognized student organizations abide by such rules.

Such criteria will require student organizations to operate in a nondiscriminatory manner as provided in Board Policy No. 1:18. In compliance with Board Policy No. 1:18(5) institutions will recognize two limited exceptions to the general requirement that organizations not restrict membership or participation on the basis of race, color, creed, religion, national origin, ancestry, citizenship, gender, transgender, sexual orientation, age, disability, genetic information, military service membership or veteran’s status. Consistently with rights guaranteed under state and federal constitutions, Board Policy No. 1:18(5) accommodates the distinctive characteristics of intimate associations or expressive associations.

1. Intimate associations involve distinctively personal aspects of life. Factors that suggest that an organization should be treated as intimate association include: (a) the relative smallness of the organization; (b) a high degree of selectivity in choosing and maintaining members of the organization; (c) the personal nature of the organization’s purpose; and (d) the exclusion of nonmembers from the central activities of the organization.

   a. A student organization that operates a residential facility for its membership would illustrate the kind of organization that might be classified as an intimate association, at least insofar as relates to limiting membership on the basis of gender.

2. Expressive associations are created for specific expressive purposes, and they would be significantly inhibited in advocating their desired viewpoints if they could not restrict their membership based on race, color, creed, religion, national origin, ancestry, citizenship, gender, transgender, sexual orientation, age, disability, genetic information or military service membership or veteran’s status.

   a. A student organization dedicated to the practice of a particular religious faith would illustrate the kind of organization that might be classified as an expressive association, at least insofar as relates to limiting membership on the basis of adherence to the tenants of that faith.

3. Exceptions from the nondiscrimination policy will be made only to the extent necessary to accommodate the particular circumstance that warrants an exception;
The overarching purpose of supporting student organization activities is to prepare students to act as citizens and leaders of a republican form of government, which by its nature permits discrimination against none.

a. By way of illustration, but not limitation, a student organization operating a residential facility for its membership may be allowed to limit membership on the basis of gender, but not on the basis of religion; a student organization dedicated to the practice of a particular religious faith may be allowed to limit membership on the basis of religion, but, absent any contrary doctrine of faith, not on the basis of gender.

B. Each institution will establish a process that student groups may follow to secure recognition as student organizations. The chief executive officer of the institution will designate an administrator who will be responsible for determining whether a group of students satisfies the criteria for recognition as a student organization. Institutions with student government organizations may request that such organizations review applications for recognition as student organizations and make recommendations to the designated administrator whether a particular group of students satisfies the institutional criteria for recognition.

3. **Funding of Student Organizations**

In order to reduce the economic barriers to forming and operating student organizations or to accessing means of communication, institutions may grant subsidies, pursuant to this section, from funds apportioned from the general activity fee.

Only recognized student organizations may receive disbursements from the fund to finance the organizations’ general operational expenses and to subsidize cultural, social, recreational and informational activities and events sponsored by the organizations.

Student activity fee proceeds shall be allocated consistently with the institution's interests as outlined in Section 1 above; provided that

A. No student organization will be eligible for student fee subsidies of its operating expenses:

1. if the funding is prohibited by Article 6, § 3 of the SD Constitution because its predominant activities involve sectarian ceremonies or exercises;

2. if the funding is prohibited by SDCL § 12-27-20 because it will be used for the promotion or opposition of particular candidates for public office or ballot issues in general elections, or financing off-campus lobbying or political activities of non-students; or
3. if the organization operates a residential facility for its membership or otherwise generates income from commercial activities for the personal use and benefit of members or on behalf of for-profit entities

2.4. if the organization generates income for the personal use and benefit of the sponsoring organization members or on behalf of for-profit entities.

This section does not prohibit a student governance body, recognized by the institution, whose leadership is popularly elected by the students, from using student fees to communicate its position on behalf of all students, either through lobbying efforts before legislative bodies.

B. The institution may distribute student activity fee proceeds to support on-campus cultural, social, recreational and informational activities and events that are open to all members of the campus community and that are sponsored by a recognized student organization, even if the organization would not be eligible for fees to support general operational expenses, but only if the activity or event does not have the primary effect of supporting sectarian ceremonies or exercises, promoting or opposing particular candidates for public office or ballot issues in general elections, financing off-campus lobbying or political activities by non-students or generating income for the personal use and benefit of the sponsoring organization members or on behalf of for-profit entities.

4. Procedures for Requesting Funding and Allocating Funds

A. Each institution will develop and publish instructions outlining the procedure that recognized student organizations may use to request funding from the general activity fee levied pursuant to Board Policy No. 5:5:4(1)(B).

B. The chief executive officer of the institution will designate an administrator who will be responsible for determining how funds will be allocated. Institutions with student government organizations may request that such organizations review applications for funding and make recommendations to the designated administrator.

C. Each institution will develop standards to guide the review of funding requests submitted by recognized student organizations. Subject to the limitations stated in § 2 of this policy, these standards will require that decisions be made on grounds unrelated to the exercise by students through the organization of their rights to free expression, to the free exercise of religion, to the freedom of association or to the freedom to petition government. Such rights-neutral mechanisms may include, without limitation, random selection from among student proposals or prioritization based upon frequency of funding or other objective factors unrelated to the exercise of protected rights.
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Political Activity

NUMBER: 4:21

1. Employees of the Board of Regents shall not be obligated, by reason of their employment, to contribute to any political funds or collections or render political service. Employees refusing to contribute such funds or to render political service may not be removed or otherwise disciplined or prejudiced for such refusal.

2. Employees of the Board of Regents shall not use their official authority or influence to coerce the political action of a person or group.

3. Employees of the Board of Regents may:

   A. Take an active part in political management, political campaigns, or non-political activities except during regularly scheduled working hours, and without the use of Board information and communication technology systems, Board services or Board property that is not available to the public and paid for at the rate offered to the public; and

   B. Seek and hold compatible elective political office. Employees, both during any election campaign and during the term of any part-time office, other than that of state representative or senator, to which the employee may be elected, are required to make specific arrangements with the president, superintendent and his/her designee to assure that the employee's regular duties are performed. Employees elected to a full-time public office are entitled to leave without pay consistent with 4:15 of the Board of Regents Policy Manual. Under current South Dakota Supreme Court interpretation of section 12, article III, of the South Dakota Constitution, employees elected to the South Dakota Legislature must resign from state employment no later than the beginning of their term in office.

4. This policy shall not prohibit activity of nonpartisan type not specifically identified with a national or state political party. Questions relating to constitutional amendments, referendums, approval of state laws, and other issues of similar character are deemed not specifically identified with a national or state political party.

5. Employees of the Board of Regents enjoy all rights of free expression accorded them under state and federal law. Nevertheless, employees, especially faculty and professional staff members, should remember that the public may judge their institution or the Board by their public statements. Accordingly, unless they have been authorized to make an official
statement on behalf of their institution or the Board, employees should make every effort to indicate that they are not speaking or writing as institutional or Board representatives. At a minimum, employees who identify their institutional affiliation should advise the public that the views that they express represent their own private or professional opinions, not those of their institution or of the Board, and that these opinions are given in their individual capacities or as private consultants.

Faculty members should, additionally, observe those standards set forth in the Board's policies on academic freedom, Policy No. 1:11, and the agreement with the Council of Higher Education.

SUBJECT: Facilities Use by Private Parties

NUMBER: 6:13

1. Institutional facilities and grounds embody investments by students and taxpayers to advance the educational, research, and service missions of the institution. They are not open to the public for assembly, speech, or other activities as are the public streets, sidewalks, parks, or seats of government. Institutional facilities and grounds are selected, designed, and operated to balance aesthetic and utilitarian considerations, to provide settings conducive to learning and research, and to provide venues to expose students to high and popular cultural activities. These purposes define the priorities for their use by private parties.

A. Casual visitors may enter institutional facilities and grounds to conduct business with the institution, to attend institution sponsored events, exhibits or programs that are open to the public, to deliver goods ordered by residents or to traverse the grounds without stopping, or for purposes incidental to personal family or social matters involving students or institutional staff.

B. Private parties may request permission to use facilities or grounds for private meetings or events. Such requests may be granted to the extent that institutional program schedules permit if the requested use is lawful and otherwise consistent with this policy, poses no risk of harm to persons or property, and will not disrupt the intended use of the facilities or grounds by the institution, its students, staff or other visitors.

C. Permission to use facilities or grounds for private meetings or events shall be contingent upon agreement to avoid disruption of institutional uses of the facilities or grounds, interference with students or employees, or damage, fouling or littering facilities, grounds or other property. Private users shall be responsible for the cleanliness and order of any facilities or grounds that they use.

D. Institutional facilities and grounds are tax exempt public facilities and, as such, are not generally available for use by private parties for commercial purposes. Institutions may contract with private parties to provide goods and services on its behalf, to provide access to dedicated advertising venues or to engage in limited mission-related testing, research or economic development activities. As part of their service to the state and their host
communities, institutions may designate specific venues where third parties may schedule occasional activities that may have incidental commercial purposes.

E. Some institutional facilities and grounds may be restricted, and private parties may only venture there if specifically invited by a person with authority to invite them. Buildings or facilities that are ordinarily open during regular business hours shall be deemed to be restricted areas if they have been locked.

2. Definitions:

A. “Affiliated entity,” and its cognates, includes organizations, such as institutional foundations, whose legal purpose includes support of the institution and its activities, organizations that have been authorized by the institution to use its name and marks, and student organizations recognized by the institution, as well as the State of South Dakota and its political subdivisions, and their instrumentalities.

B. “Commercial purposes” include activities that involve the exchange of goods or services for valuable consideration and speech that relates solely to the economic interests of the speaker and audience and proposes a commercial transaction.

C. “Disrupt,” and its cognates, includes any actions that infringe institutional rules, interrupt institutionally sponsored or authorized instructional, research or service activities, or substantially interfere with the opportunity of other persons to use institutional grounds or facilities for their intended or authorized purposes.

D. “Facilities and grounds” includes buildings, structures, internal streets and sidewalks, parking facilities, athletic facilities, landscaping and grounds owned or occupied by the institution, but excludes municipal streets or sidewalks or public highways or rights of way that abut or traverse a campus.

E. “Private party” includes any individual or group other than the institution, its affiliated entities, or their officers, agents, faculty or staff when acting on their behalf.

F. “Events” includes speeches, presentations, social gatherings, religious ceremonies, entertainments, youth camps or other activities that pose no substantial risk of injury to persons and property and that are generally consistent with the kinds of activity sponsored by the institution itself.
G. “Working days” means those days when the offices of the institution are open for business.

3. Private parties must request prior authorization to use a facility or a portion of the institutional grounds. Each institution shall develop and shall make public practices and rules to implement this policy. In particular,

A. Each institution shall appoint a person or persons to receive and to administer private party requests for permission to use institutional facilities or grounds for meetings or events.

B. Each institution shall designate those facilities, or portions thereof, or portions of the grounds that may be used by private parties for meetings or events, and shall specify whether, when and how private parties may use application in conjunction with their meetings or events. Each institution shall differentiate between meeting rooms and classrooms that are appropriate for meetings involving up to one hundred persons and lecture halls, auditoria, outdoor areas and other places that are appropriate for larger events and gatherings. If an institution elects to permit limited activities for commercial purposes, it shall identify which facilities are available for such purposes and shall indicate what kinds of commercial purposes may be pursued in the facilities.

C. Each institution shall designate those days, including finals week and the week preceding it, when facilities and grounds will not be available for private meetings or events.

D. Each institution shall establish and publicize local rules to implement this policy. These rules shall provide, at minimum, that

1) Private parties may request permission to use institutional facilities or grounds for meeting or events that will not interfere with the use of the facilities by the institution or institutionally affiliated organizations.

2) Private parties seeking permission to use institutional facilities or grounds shall complete and submit written applications on forms developed by the institution.

3) Private parties requesting permission to use facilities or grounds for events shall submit completed forms and all necessary attachments no less than three (3) working days prior to the date on which they wish to use the facilities or grounds.
4) Private parties may not reserve facilities or grounds for regularly scheduled meetings, thereby precluding institutional uses of the facility.

5) Private parties who have been granted permission to use institutional facilities shall agree to abide by all institutional regulations and shall not publicize their meetings or events in ways that suggest co-sponsorship by the institution.

6) Private parties shall agree to restore facilities and grounds to the state of cleanliness and repair in which they found them or to pay for custodial or repair services at standard university rates and for extraordinary restoration or replacement expenses at cost.

7) Private parties shall agree to avoid actions that disrupt pedestrian or vehicular traffic on campus grounds, interfere with the instructional, research, service or administrative activities of the institution or disrupt meetings or events sponsored by the institution or other private parties.

8) Private parties shall agree to comply with limitations on the use of amplification equipment.

9) Private parties seeking permission to use facilities for commercial purposes or to sponsor events with planned attendance of five hundred people or more shall provide security and shall purchase event insurance in the amount of one million dollars, naming the State of South Dakota, the Board, the institution and their officers, agents and employees as named insureds.

10) Private parties may be charged fees at published rates to cover the costs institutions incur to provide private parties access to the selected facilities or grounds and to maintain and to repair of such facilities; however, any such fee(s) must be based on definite and objective criteria that are not content-based.

11) Private parties may be allowed to purchase at published rates institutional services to prepare the facilities for private use, to monitor use of the facilities during meetings or events and to restore the facilities to their prior state.

12) Private parties wishing to serve, or to offer for sale, food or beverages shall make any necessary arrangements with the institutional food service provider, if applicable.
E. Each institution shall establish procedures to implement its local rules. These procedures shall provide, at minimum, that

1) Copies of the Board and institutional rules, information about institutional facilities and grounds available for use by private parties, schedules of fees and all forms needed to apply for permission shall be published, together with contact information to enable readers to obtain clarification of the meaning or application of rules or assistance in completing applications.

2) Private parties seeking permission to use institutional facilities or grounds shall complete and submit written applications on forms prepared by the institution, together with all necessary documentation.

3) Private parties seeking permission to use facilities or grounds for events shall submit the required written documentation no less than three (3) working days prior to the date on which they wish to use the facilities or grounds;

4) The institution shall act upon applications no later than the third (3rd) working day after receipt of a completed application.

5) Except as provided in § III (E) (7), below, the institution shall grant applications for meetings or events if,

   a. the applications, and all required attachments, have been completed; and

   b. the meetings or events have lawful purposes and would otherwise be consistent with this policy and the institutional rules that implement it will comply with the requirements and limitations contained in this policy and the institutional policy(ies) or rule(s) that implement it;

   e. the meetings or events pose no risk of harm to persons or property;

   d. the meetings or events will not disrupt the intended use of the facilities or grounds by the institution, its students, staff or other visitors;
e. the meetings or events will take place at times during the academic calendar when private parties are permitted to schedule such uses of facilities or grounds;

f. the private parties agree to abide by the requirements of this policy and the institutional rules that implement it; and

g. the meetings or events will not conflict with previously scheduled institutional or private activities.

6) If the institution denies an application for a meeting or event, it shall provide the private party with a written explanation for the denial.

a. The denial shall be effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant or deposit of the written denial in the United States mail.

7) The institution may deny applications for meetings or events only if,

a. The private party has failed to comply with the requirements of § III (E) (5), above, or the meeting or event or the requested schedule otherwise does not meet the standards stated in that section.

   i. If permission is denied due to a conflict with the academic calendar or with previously scheduled activities, the institution shall propose an alternative facility or place if available for the same time, or an alternative time, if available, for the same place.

b. The private party has on prior occasions made material misrepresentations regarding the nature or scope of a meeting or event previously permitted or has violated the terms of prior use agreements.

c. Any of the following grounds are present:

   i. The application for permit contains a material falsehood or misrepresentation;
ii. The applicant is legally incompetent to contract or to sue and be sued; or

iii. The applicant has on prior occasions damaged institutional property and has not paid in full for such damage, or has other outstanding and unpaid debts to the institution.

d. Private persons whose prior conduct would justify denial of permission to use facilities or grounds may not avoid denial by creating new organizations, by associating themselves with other private organizations or by otherwise associating themselves with others for the purposes of avoiding denial of permission under this section.

§36. A written denial shall advise private parties of their right to appeal the denial by filing a signed, written appeal with the official designated by the institutional chief executive officer to receive such appeals. Any denial issued pursuant to this policy shall be deemed effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant, or deposit of the written denial in the United States mail.

a. The appeal must be presented on the approved form.

a-b. The person receiving the appeal shall not be the same official who issued the original denial.

b-c. The completed written appeal must be presented within five (5) working days after the denial was communicated, transmitted, or deposited in the mail issued.

c-d. The appeal shall state specifically facts that, if proven, would demonstrate

   i. that the denial was based upon an incorrect assessment of material fact or

   ii. that it involved a misinterpretation, misapplication or violation of the requirements of Board or institutional policy.

Mere conclusions, general allegations and speculative statements cannot establish a factual ground for the claim that Board or institutional policy has been misinterpreted,
misapplied or violated.

d. The institution will respond to such appeals via email within two (2) working days after their receipt by the institution. Should the institution deny the appeal, it shall provide in its response the procedure for appealing the decision to the institutional chief executive officer.

i. The institution may determine that it shall address the concerns raised by the private party and shall determine whether denial was grounded in fact and proper under § III (E) (7).

ii. The institutional response shall be effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant or deposit of the written denial in the United States mail.

e. If the private person remains dissatisfied, the private person may appeal to the institutional chief executive officer by filing a written appeal on the same approved form within five (5) working days after the institution issued its response.

i. The appeal to the institutional chief executive officer shall state specifically the grounds for believing that the grounds for denial misinterpreted, misapplied or violated the requirements of Board or institutional policy.

f. The institutional chief executive officer shall have fifteen-tenten (10) working days after receipt of such an appeal to conduct such an investigation as may be warranted under the circumstances and to issue a written decision addressing the concerns raised by the private party, and determining whether denial was proper under § III (E) (7), and, if the appeal is denied, informing the private party of the discretionary appeal to the Executive Director of the Board of Regents.

i. The decision of the institutional chief executive officer shall be effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing
Facilities Use by Private Parties

Facilities Use by Private Parties

The written denial to the applicant or deposit of the written denial in the United States mail.

g-h. After exhausting institutional appeals, the private party may appeal the determination of the institutional chief executive officer by submitting a written appeal to the Executive Director of the Board of Regents within ten (10) working days from the effective date of the institutional chief executive officer decision. Such an appeal shall include the application, the denial, the appeals and decisions exchanged at the institutional level, and the required appeal form.

h-i. The Executive Director of the Board of Regents shall have fifteen (10) working days after receipt of such an appeal to review the appeal and its documentation and to determine whether to attempt to mediate a resolution. Within fifteen (5) working days thereafter, the Executive Director shall either issue a preliminary recommendation or refer the matter to a hearing examiner to determine whether the matter presents contested issues of material fact warranting a hearing or whether denial was proper under § III (E) (7) as a matter of law.

i. If the Executive Director issues a preliminary recommendation that would deny the private party relief, the private party shall be allowed ten (10) working days from the transmission or deposit in the mails of the Executive Director’s written response to provide reasons why that response should not become final. The recommendation of the Executive Director and any responses by the private party will be forwarded to the Board at the next regularly scheduled meeting.

ii. If the Executive Director appoints a hearing examiner using the contested case proceedings pursuant to SDCL ch. 1-26, the hearing examiner shall contact the institution and the private party within ten (10) working days from the date of appointment to schedule any necessary exchanges of authorities, hearings or evidentiary hearings.

All parties to the dispute have the right to obtain witnesses and present evidence. The institution will cooperate with the hearing examiner in securing witnesses and in making
available specifically identified and relevant documentary and other evidence requested by
the private party, to the extent not limited by contract or law. The parties to the grievance will
have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the
hearing examiner determines that the interest of justice requires admission of their statement,
then the hearing examiner will arrange for a deposition. The hearing examiner may grant
continuances when requested by either party to enable either party to investigate evidence, or
for any other reason deemed appropriate. The hearing examiner will keep a record of the
proceedings.

a. The hearing will not be conducted under
strict rules of legal evidence and is not a
contested case. Every possible effort will be
made to obtain the most reliable evidence.

b.a The hearing examiner will make a
recommendation to the Board which will
take the form of findings, conclusions and an
order of disposition and will be issued within
fifteen working days of the hearing or of the
expiration of any briefing schedule
established by the hearing examiner. A copy
of the recommendation will be provided to
the institution and to the private party. The
recommendation must be based solely on the
record, pertinent institutional and Board
policies, this agreement and the law of the
land.

iii. The Board will make a final decision based upon
the recommendation of the hearing examiner or the
Executive Director where a matter is to be resolved
as a matter of law. In addition, it may review the
record pertinent to the issues and may hear
testimony from individuals as it deems
appropriate. Such decision will be made at the
next regularly scheduled Board meeting following
receipt of the recommendation, provided the
recommendation is received not less than ten
working days prior to the Board meeting. If not
received in time, the recommendation will be acted
upon at the subsequent meeting. If the Board
rejects or modifies the recommendation of the
hearing examiner or the Executive Director, the
Board will provide the institution and the private
party with the reasons for rejecting or modifying
the recommendation.
j. Appeals from the decision of the Board will be governed by SDCL ch 1-26.

SOURCE: BOR, August 2007; BOR, April 2009.
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Acceptable Use of Information Technology Systems

NUMBER: 7:1

1. Purpose

The Board acquires, maintains and operates information technology systems to support administrative, research, instructional and service functions of the universities and special schools. This policy serves to assure the optimum functioning of these information technology systems and to protect them from abuse and from unlawful or other misuse. By using the electronic information and communications systems, users agree to abide by all relevant policies and procedures, as well as all current federal, state, and local laws.

2. Information Technology Devices and Systems Subject to this Policy

Information technology systems include any and all electronic means used to create, store, access, transmit and use data, information or communications in the conduct of administrative, instructional, research or service activities. These systems include, devices now in existence, or to be invented, that serve such purposes.

A. Privately owned information technology devices will be subject to all policies governing system use, including those involving administrative access to system components, while actively connected to the system.

1. Persons wishing to use privately owned information technology devices to access Board information technology services may be required to demonstrate to the satisfaction of the Chief Information Officer that their devices and software conform to the specifications of the information technology systems.

3. Selection and Operation of Information Technology Systems

Information technology systems can only achieve their intended purposes if they operate in an integrated fashion. Therefore, the selection, purchasing, allocation, installation, maintenance, replacement and governance of electronic information and communications systems necessarily involve the governmental policy-making responsibilities of the Board.

A. In its sole discretion, the Board shall select, purchase, allocate, install, maintain, replace and regulate the hardware, software or support services that comprise its information technology systems.

1. The Board will make reasonable effort to support specialized information systems needed for research.
2. The Board will determine the extent of the authority granted to each user to access its information technology systems.

3. The Board will regulate uses that affect system performance or availability of system resources.

4. Administrative Monitoring, Access and Disclosure of Information Technology Systems Data or Contents

A. The Board safeguards the privacy and confidentiality of information and communications systems in accordance with relevant laws, regulations, and policies. While the Board permits limited personal use of the communications components within its information technology systems, persons availing themselves of this privilege do not acquire a right of ownership or privacy in communications transmitted or stored on university information technology resources.

B. The Board routinely monitors aggregate information technology system usage to assure proper system operation, but it does not routinely monitor use of information technology systems. Nevertheless, the Board will access components of information technology systems to conduct routine operation, troubleshooting, audit, maintenance or security activities; to investigate activities that disturb optimum information technology system operations; to recover documents or files needed for instructional, research, service or business activities; to respond to health or safety emergencies; to investigate violations of law, policy or rule; or to respond to inquiries properly initiated under law.

1. Routine maintenance may include remote access to components of information technology systems to install anti-virus programs, software updates or for other purposes designed to assure the integrity and optimal functioning of the information technology systems.

2. In the event that administrative monitoring of system operation or investigating apparent policy violation necessitates the inspection of a privately owned information technology device, the owner will be deemed to have consented to its inspection at all times when the device is actively connected to the information technology systems.

C. Individual users with access to communications components within the Board’s information technology systems may access or disclose the content of communications in which they are intended correspondents; provided that the disclosure does not involve an unacceptable use under this policy or otherwise involve a violation of law, regulation or policy.

D. Reasonable administrative access to information technology and communication systems for purposes other than routine operation, troubleshooting, audit, maintenance
or security activities, will be authorized by the Board’s Chief Information Officer (or such subordinates as that officer may designate), for good cause shown. The following circumstances illustrate, but do not limit, situations where access may be provided, with or without notice in accordance with law:

1. When requested by the Board of Regents General Counsel, or an attorney designated by the General Counsel for such purposes, in order to respond to a court order, subpoena, search warrant or other such duly issued mandate;

2. When requested for necessary business purposes by an appropriate system or institutional official, including, but not limited to, the Board of Regents General Counsel, or an attorney designated by the General Counsel to represent the institution, Chief Human Resources Officer, or the Vice President with administrative responsibility and supervision over the administrative unit, functions and staff that use the components of information technology systems for which access is sought;

3. When requested in furtherance of the legal, regulatory, or other applicable duties of the institution or the system;

4. When requested in the course of investigating potential violations of policy, rule or law; or

5. When requested in the course of responding to a health or safety matter.

5. Acceptable Use of Information Technology Systems

Use of the Board’s information technology systems is a privilege and requires that individual users act responsibly. Individual users must respect the rights of other users, respect the integrity of the systems, and observe all relevant laws, regulations, and contractual obligations. Since electronic information is volatile and easily reproduced, users must exercise care in acknowledging and respecting the work of others through strict adherence to software licensing agreements, copyright, patent, trademark and trade secret laws. When accessing remote resources from Board or institutional facilities, users are responsible for following the policies of Board:

A. Authorization to access the information technology systems is granted only to support the administrative, research, instructional and service functions of the universities and special schools.

B. Authorized users may use the systems for incidental personal purposes provided that such use does not:

1. Directly or indirectly interfere with the Board's operation of such systems;
2. Interfere with the user's employment or other obligations to the Board,

3. Burden the Board with noticeable incremental costs, or

4. Violate law or Board policy;

6. **Unacceptable Use**

   Notwithstanding any other provision of policy, certain uses of information technology systems are unacceptable, and persons who engage in such uses may be denied access to information technology systems peremptorily and referred for disciplinary action. Unacceptable use includes, but is not limited to, the following attempted or completed actions:

   1. Infringing intellectual properties, including copyrights, patents, and trademarks;

   2. Disclosing trade secrets or other information resident in the systems that is private, confidential or privileged;

   3. Violating intellectual property licensing agreements;

   4. Interfering with the normal operation of electronic communications resources, including, without limitation:

      a. Modifying, damaging or removing, without proper authorization, electronic information or communications system components or private electronic information or communications resources belonging to other users;

      b. Encroaching upon others' access and use of the electronic information and communications system, as exemplified, without limitation, by sending excessive numbers of messages, printing excessive copies, running grossly inefficient programs when efficient alternatives are available, attempting to crash or tie up electronic communications resources;

      c. Intercepting, monitoring or otherwise conducting surveillance of communications, whether live or stored, of others;

      d. Developing or using programs such as, but not limited to, viruses, backdoors, logic bombs, Trojan horses, bacteria, and worms that disrupt other users, access private or restricted portions of the system, identify security vulnerabilities, decrypt secure data, or damage the software or hardware components of an electronic communications resource; provided that supervised academic research into such mechanism may be conducted upon the review and approval of the chief institutional...
academic affairs officer and the Board’s Chief Information Officer (or such subordinates as that officer may designate), as to matters involving the compatibility of such research with the proper functioning of the information and communications systems;

e. Installing or attaching any equipment to the electronic information and communications system without the prior approval of the Board’s Chief Information Officer (or such subordinates as that officer may designate);

5. Accessing electronic information or communications systems without proper authorization, intentionally enabling others to do so, or exceeding authorization;

   a. Any superior who directs a subordinate to access electronic information systems under circumstances that exceed the authorized access of the institution or organizational unit will be deemed to have indirectly exceeded authorized access and will be subject to discipline.

   b. Subordinates who decline to exceed authorized access to electronic information systems or who report efforts to induce them to do so will not, for those reasons, be subject to adverse employment action.

6. Disclosing, without authorization, the password to a password-protected account;

7. Using the system in an unlawful or tortious manner, in ways involving obscene materials or in violation of Board policies, including, without limitation:

   a. Using electronic information or communications systems for criminal purposes, including, without limitation, SDCL §§ 22-19A-1 (stalking); 22-22-24.2 (possession, manufacture or distribution of child pornography); 43-43B-1 (unlawful uses of computer systems); Omnibus Crime Control and Safe Streets Act of 1968 (unlawful interception of communications); Computer Fraud and Abuse Act (unlawful access to computer systems); Protection of Children Against Sexual Exploitation Act of 1977 (trafficking in child pornography);

   b. Distributing fraudulent, libelous, slanderous, harassing, threatening, or other tortious communications;

   c. Creating, downloading, exchanging or possessing obscene material as defined by SDCL § 22-24-27, unless previously authorized for bona fide instructional or research purposes;

   d. Harassing individuals in violation of Board policies proscribing harassment;
8. Using the identity of another user without the explicit approval of that user, or masking the identity of an account or machine or person;

9. Creating the false impression that the user has authority to represent, give opinions, tender endorsements or otherwise make statements on behalf of the Board or the institution;

10. Using the information and communications system for partisan political purposes, in violation of SDBOR Policy 4:21, or where the message could be reasonably construed as expressing the position of the institution itself other than the expression of private political views by participants in otherwise permitted communications, so long as the user specifically disclaims any support, endorsement, or opposition by the Board for the views so expressed;

11. Using the information and communications system for the purpose of sectarian purposes, to provide sectarian instruction or to benefitting of any sectarian or religious society or institution in violation of Article 6, § 3 of the SD Constitution, other than the use of religion based rationale or expression by participants in otherwise permitted communications, so long as the user specifically disclaims any support, endorsement, or opposition by the Board for the views so expressed;

12. Using the information and communications system for advertising, solicitations or promotions or other private commercial purposes, including personal purposes, except as permitted under Board policy or with the appropriate approval.

13. Using institutionally created mailing lists without specific prior authorization which may be granted solely for purposes of communicating institutional messages to recipients.

7. Temporary Suspension of Privileges and Disciplinary Measures

Authorized users will be subject to discipline for violation of this policy.

A. When alleged violations of this policy come to the attention of the Board’s Chief Information Officer (or such subordinates as that officer may designate), the Chief Information Officer shall investigate the allegations and may temporarily suspend access privileges if necessary or appropriate to maintain the integrity of the system or to comply with the system’s legal obligations.

1. Temporary suspension of access privileges is not a disciplinary action, but it will be deemed to be a grievable matter.

B. Users, when requested, will cooperate with institutions in the investigation of suspected
violations of this policy. Failure to cooperate may result in suspension of access to the systems or to discipline.

C. If the investigation establishes reasonable grounds to believe that a user has violated this policy, the Board’s Chief Information Officer (or such subordinates as that officer may designate) shall initiate disciplinary proceedings.

1. The procedural and appeal rights of users will be based upon rights provided to similarly situated employees or students.

2. To the extent that any employee or student disciplinary code or procedure is inconsistent with the requirements of this policy, this policy shall control.

D. Where the facts that would trigger disciplinary action under this policy may also constitute a criminal infraction under any state or federal law it may be reported to responsible authorities, whether or not disciplinary action is initiated.