

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 6 – G
DATE: June 23-24, 2021

SUBJECT

Medical Marijuana Policy Revisions (First & Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[Controlled Substances Act](#)

[Drug-free Workplace Act](#)

[Drug-free Schools and Communities Act](#)

[SDCL chapter 34-20G](#) (Medical Cannabis – Effective July 1, 2021)

BACKGROUND / DISCUSSION

In November of 2020, South Dakota voters approved Initiated Measure 26 (“IM 26”), which establishes a medical marijuana program in South Dakota, effective July 1, 2021. As a result, various BOR policies require revision to adjust for the legalized presence of medical marijuana in South Dakota. Notwithstanding the passage of IM 26, marijuana (TCH) remains a controlled substance in Schedule 1 of the Controlled Substances Act at the federal level, creating conflict between the state and federal authority on the topic, specifically the Drug-free Workplace Act and Drug-free Schools and Communities Act, which have federal funding implications for our institutions.

The proposed policy revisions solidify the Board’s prohibition on the use or possession of marijuana, including medical marijuana, on property owned or controlled by the Board or at events hosted or sponsored by the Board or any of its institutions. The proposed policy revisions do not prohibit a student, employee or visitor with a validly issued written certification for medical marijuana from ingesting medical marijuana on property not controlled or owned by the Board, but the policies do place limitations or restrictions on the individuals when they are on campus or working. When an employee reports to work they must not be impaired or otherwise unable to perform the duties of their position and students attending class or participating in activities may not be impaired or otherwise disrupt academic or campus activities as a result of their off-campus medical marijuana use. Students and employees found in violation of the foregoing are subject to disciplinary action.

(Continued)

DRAFT MOTION 20210623_6-G:

I move to approve the first and final reading of the proposed revisions to BOR Policies 3:4, 3:6, 4:4, 4:14, 4:27 and 6:13, as presented.

The proposed revisions to BOR Policy 4:27 squarely address the federal requirements/implications and the Board's position as it relates thereto. The proposed revisions to BOR Policies 3:4, 3:6, 4:4, 4:14 and 6:13 operationalize the Board's position in the pertinent areas with overlap with, or applicability to, medical marijuana use or possession and the actions or consequences related thereto, whether with respect to students, employees or visitors on campus. Of note, the proposed revisions to BOR Policy 3:6 would recognize a student holding a currently valid written certification for the medical use of cannabis as a circumstance for which an exception to the on-campus housing requirement would ordinarily be waived.

IMPACT AND RECOMMENDATION

The proposed policy revisions set forth in Attachments I – VI ensure compliance with applicable federal authority by prohibiting the use and possession of marijuana, including medical marijuana, on property owned or controlled by the Board or at events hosted or sponsored by the Board or any of its institutions. Additionally, the proposed revisions provide for the appropriate enforcement and/or disciplinary framework to effectively carryout the aforementioned prohibitions.

Staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 3:4

Attachment II – Proposed Revisions to BOR Policy 3:6

Attachment III – Proposed Revisions to BOR Policy 4:4

Attachment IV – Proposed Revisions to BOR Policy 4:14

Attachment V – Proposed Revisions to BOR Policy 4:27

Attachment VI – Proposed Revisions to BOR Policy 6:13

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Student Code of Conduct

NUMBER: 3:4

A. PURPOSE

To establish the expectations of student conduct, the process for determining when there is a violation of the conduct code, and the appeals process available when a violation is found.

B. DEFINITIONS

1. **Advisor:** 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.
2. **Appellate Board:** 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.
3. **Board Policy:** The written policies of the South Dakota Board of Regents contained in the policy manual.
4. **Chair:** The Student Conduct Officer or the senior student affairs officer who:
 - 4.1. Is a member of the Student Conduct Panel;
 - 4.2. Is responsible for the proper operation of the hearing; and
 - 4.3. Has sole discretion to determine whether a Respondent has violated the Student Code, and if so, to impose appropriate sanctions.
5. **Complainant:** An individual who was allegedly injured by an alleged violation of the Student Code by a respondent.
6. **Day:** Monday through Friday, except for holidays and other times when the Institution's administrative offices are closed.
7. **Faculty Member:** Any person hired by the institution to conduct classroom or other academic activities.
8. **FERPA:** the Family Educational Rights and Privacy Act of 1974, as amended.

9. **Human Rights Violations:** Violence, Harassment, Stalking, Discrimination, and Retaliation under this Student Code not constituting Sexual Harassment as defined by section 2.4.6 below.
10. **Institution:** 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.
11. **Institutional Official:** Any person employed by the institution, performing assigned administrative or professional responsibilities.
12. **Institutional Premises:** All land, buildings, facilities, and other property in the possession of, or owned, used, or controlled by, the Institution, including adjacent streets and sidewalks.
13. **Member of the Institutional Community:** 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.
14. **Notice:** 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.
15. **Organization:** Any student group that has been granted institutional registration or recognition.
16. **Policy:** 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.
17. **Reasonable Person:** A reasonable person under similar circumstances and with similar identities as the complainant.
18. **Respondent:** A student or organization that is alleged to have violated the Student Code.
19. **Senior Student Affairs Officer:** That institutional official exercising primary authority over institutional student affairs programs and operations, or designee.
20. **Student:** 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.
21. **Student Code:** The Student Code of Conduct contained in this Board Policy 3:4.
22. **Student Conduct Panel:** The panel that hears formal hearings.
 - 22.1. This panel can take the following forms:
 - 22.1.1. Option 1 – only the Student Conduct Officer;
 - 22.1.2. 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;

22.2. 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.

23. Student Conduct Officer: Any institutional official authorized by the Senior Student Affairs Officer to:

23.1. 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

23.2. Serve as chair of the Student Conduct Panel;

23.3. Receive and consider the findings and recommendations of a Student Conduct Panel; and

23.4. Determine whether a respondent has violated the Student Code, and if so, to impose appropriate sanctions.

C. POLICY

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.

1.1. 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.

1.2. 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.

1.3. Authority of an Institution over its Students and Organizations

- 1.3.1. Student conduct proceedings may be initiated in response to conduct prohibited by the Student Code:
 - 1.3.1.1. That occurs on institutional premises
 - 1.3.1.2. That occurs at events official sponsored by an institution
 - 1.3.1.3. That arises out of membership in the Institutional community: or
 - 1.3.1.4. That occurs elsewhere and that adversely affects an Institution, any Organizations, members or the Institutional community, or the pursuit of their lawful objectives.
- 1.3.2. 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.
- 1.3.3. For purposes of the Student Code, the default authority over the student for student conduct purposes will be determined as follows:
 - 1.3.3.1. For alleged misconduct that occurs on institutional premises, the institution where the alleged misconduct occurred;
 - 1.3.3.2. For alleged misconduct that occurs at events officially sponsored by an institution, the institution that sponsored the event;
 - 1.3.3.3. For alleged misconduct that occurs elsewhere and that adversely affects an institution, the institution adversely affected;
 - 1.3.3.4. For alleged instances of Academic Misconduct, the institution that offered the course.
- 1.3.4. 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.
- 1.3.5. 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.

1.4. 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.

- 1.4.1. 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:
 - Participates in an initial meeting with the Senior Student Affairs Officer; and
 - Completes all recommendations from the Senior Student Affairs Officer; and
 - Submits proof of completion of all recommendations, within the time frame designated by the Senior Student Affairs Officer at the initial meeting.
- 1.4.2. 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.
- 1.4.3. 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.
- 1.4.4. Subsections C.1.4.1 and C.1.4.2 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.
- 1.4.5. Alcohol amnesty does not preclude disciplinary action regarding other violations of the Student Code.
- 1.4.6. 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.
- 1.4.7. 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.

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

- 1.5.1. 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.
- 1.5.2. 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.
- 1.5.3. 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.
- 1.5.4. 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.
- 1.5.5. 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.
- 1.5.6. 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.
- 1.5.7. 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.
- 1.5.8. 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.
- 1.5.9. 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.

1.6. Interpretation and Revision

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

- 1.6.2. Institutions must ensure that institutional interests do not interfere with the impartiality of the student conduct process.
- 1.6.3. Any question of interpretation regarding the Student Code shall be referred to the Senior Student Affairs Officer for final determination.
- 1.6.4. The Student Code should be reviewed periodically under the direction of the Senior Student Affairs Officers.
 - 1.6.4.1. If the review leads to a recommendation that Board Policy be modified, that recommendation and its supporting rationale shall be provided to the institutional presidents and, if approved, forwarded to the Executive Director.

1.7. Institutions may choose to adopt institutional policies that are consistent with this Student Code.

2. 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.

2.1. 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.

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

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

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

- Acquiring, without permission, tests or other academic material belonging to the instructor or another member of the institutional faculty or staff;
- Engaging in any behavior prohibited by the instructor in the course syllabus or in class discussion;
- Falsifying or misrepresenting data or results from a laboratory or experiment; or
- Engaging in other behavior that a reasonable person would consider to be cheating.

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

- Using, by paraphrase or direct quotation, the published or unpublished work of another person without full and clear acknowledgment;
- 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
- Engaging in other behavior that a reasonable person would consider plagiarism.

2.1.2. Engaging in other conduct that a reasonable person would consider dishonesty relating to academic achievement, research results or academically related public service.

2.1.3. 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.

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

2.1.5. Tampering with the election of any organization.

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

2.2. Disruption, Obstruction, or Interference with Institutional Activities

2.2.1. Disrupting or obstructing institutional activities.

2.2.2. 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.

2.2.3. 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.

- 2.2.4. Obstruction of the free flow of pedestrian or vehicular traffic.
- 2.2.5. Abuse of the student conduct process, which includes, but is not limited to, any of the following:
- Falsifying, distorting, or misrepresenting information provided;
 - Making false allegations;
 - Attempting to discourage an individual's proper participation in, or use of, the Student conduct process;
 - Harassment (verbal or physical) or intimidation of any person participating in the Student conduct process;
 - Failure to comply with any conduct sanctions imposed pursuant to this Student Code.
- 2.3. Misuse of Institutional Resources or Property, or Personal Property of Others
- 2.3.1. Tampering with fire and life safety equipment including, without limitation, fire alarms, sprinkler systems, first aid equipment, and laboratory safety apparatus.
- 2.3.2. Unauthorized taking of, damage to, or possession of property belonging to the Institution, another member of the institutional community, or another person.
- 2.3.3. Unauthorized possession, duplication, or use of keys, access cards, or access codes to any institutional premises.
- 2.3.4. Unauthorized entry into, or use of, institutional premises.
- 2.3.5. Unauthorized possession, entry into, or use of institutional equipment, software systems, or information.
- 2.3.6. 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;
- 2.3.7. Unauthorized use or abuse of technology, including, but not limited to:
- Unauthorized entry into a file or program to use, copy, read, delete, or change the contents, or for any other purpose;
 - Unauthorized transfer of a file;
 - Unauthorized use of another individual's identification or account;
 - Use of technology to interfere with the work of another student, faculty member, or institutional official;
 - Use of an Institution's technology to engage in Harassment.
 - Use of technology to engage in unlawful activities, including those involving uses that infringe intellectual property rights;

- Use of technology to interfere with normal operation of an institution's technology or other system;
- 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;
- Attempting to circumvent data protection schemes or tampering with security;
- Violating institutional or board computer use or internet policies.

2.4. Threat of Harm or Actual Harm to a Person's Physical or Mental Health or Safety

- 2.4.1. 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.
- 2.4.2. Brandishing, pointing, or using a knife, gun, or other weapon towards another person, except in reasonable self-defense.
- 2.4.3. Restraining or transporting another person without that person's permission.
- 2.4.4. Making bomb threats.
- 2.4.5. Harassment, which includes, but is not limited to: Conduct towards another person that is so severe, pervasive, and objectively offensive that it effectively denies the individual's ability to participate in or to realize the intended benefits of an Institutional activity or resource; and
- 2.4.6. Sexual Harassment, which is conduct on the basis of sex that satisfies one or more of the following:
 - 2.4.6.1. An employee of an institutional conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
 - 2.4.6.2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
 - 2.4.6.3. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA), the definitions of which are set forth in BOR Policy 1:17.1.
- 2.4.7. 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.
 - 2.4.7.1. "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.

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

2.4.8. 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:

- 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;
- Destroys or removes public or private property;
- Involves the consumption of alcohol or other substances to excess; or
- Violates any Board Policy or Institutional Policy.

2.4.8.1. 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.

2.4.8.2. 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.

2.4.8.3. Invasion of Privacy occurs when:

- 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
- 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.

2.5. Discrimination and Retaliation

2.5.1. 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.

- 2.5.2. 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.

2.6. Housing and Living Groups

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

2.7. Use and Misuse of Substances

- 2.7.1. The unauthorized manufacture, sale, possession, use, or consumption of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances by students.
- 2.7.2. However, possession, use, or distribution of alcohol, marijuana, or controlled substances is permitted on premises controlled by the Board of Regents when:
- 2.7.2.1. Needed in conjunction with approved research activities;
- 2.7.2.2. 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;
- 2.7.2.3. 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
- 2.7.2.4. The possession, use, or distribution of the controlled substance is prescribed by a licensed health care professional authorized to prescribe such substances. For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23). Students who use medical marijuana pursuant to a validly issued written certification when not on property controlled by the Board may subsequently report to class or participate in activities as long as such use does not cause impairment or disrupt academic or campus activities.
- 2.7.2.5. Alcohol is possessed, used, or distributed in a manner that is expressly approved by a Board Policy.
- 2.7.3. The unauthorized possession of any drug paraphernalia.

2.8. Violation of Policy or Laws

2.8.1. Violation of published Board of Regents or Institutional Policies, rules, or regulations.

2.8.2. Violation of federal, state, or local law.

2.9. RESERVED

2.10. Conduct by Organizations

2.10.1. 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.

2.10.2. 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:

2.10.2.1. 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);

2.10.2.2. Prohibit the manufacture, possession, use, or dispensing of marijuana (including cannabis used or possessed for medical purposes) or unauthorized controlled substances at organizational functions or in the organizational residence;

2.10.2.3. Prohibit the expenditure of organizational funds on alcoholic beverages, marijuana (including cannabis used or possessed for medical purposes), or controlled substances;

2.10.2.4. Prohibit the informal collection of monies from members, associates, or invitees to be spent on alcoholic beverages, marijuana (including cannabis used or possessed for medical purposes), or controlled substances;

2.10.2.5. Prohibit the possession, use, or distribution of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances on premises controlled by the Board of Regents, except as explicitly permitted by Section C.2.6.2 of this Student Code;

2.10.2.6. 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

2.10.2.7. 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;

- 2.11. Institutions may impose additional or more restrictive conditions on official recognition.
- 2.12. 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).

3. Student Conduct Process

3.1. Allegations of Sexual Harassment

- 3.1.1. Allegations of sexual harassment against a student shall be addressed exclusively through BOR Policy 1:17.

3.2. Allegations other than Sexual Harassment

- 3.2.1. All allegations other than sexual harassment against a student shall be addressed as set forth herein. 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.

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

- 3.2.1.2. Allegations of Human Rights Violations shall follow the process outlined in Board Policy 1:18.

- 3.2.1.2.1. 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.

- 3.2.1.2.2. 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.

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

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

- 3.2.1.2.5. 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.

- 3.2.1.2.6. The investigator assigned must make findings of fact and conclusions as to whether the facts support a Human Rights violation.
- 3.2.2. 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.
- 3.2.2.1. 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.
- 3.2.2.2. 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.
- 3.2.2.3. Allegations of Academic Misconduct that are not informally resolved pursuant to Board Policy 2:33 will enter the student conduct process here.
- 3.2.2.4. Allegations of Human Rights Violations that are not informally resolved pursuant to Board Policy 1:18 will enter the student conduct process here.
- 3.2.3. If the Student Conduct Officer determines that either (i) the allegations, if true, would not violate the Student Code or (ii) that 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.
- 3.2.4. 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.
- 3.2.5. The written notice to the respondent must include the following:
- The alleged behavior that would be a violation of the Student Code;
 - The date and location of the alleged behavior;
 - The section(s) of the Student Code alleged to have been violated;
 - The name of the complainant;

- 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;
- Information about the right to have an advisor present throughout the student conduct process;
- Information about both the informal and formal resolution processes;
- 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;
 - The minimum time limit may be waived by the respondent.
 - The maximum time limit may be extended at the discretion of the Student Conduct Officer.

3.2.6. 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.

3.2.7. 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.

3.2.7.1. For matters involving Human Rights Violations where an investigation was conducted pursuant to Board Policy 1:18, no additional investigation is required.

3.2.7.2. 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.

3.3. 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.

3.3.1. 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.

- 3.3.1.1. In circumstances involving allegations of stalking, interim measures must be provided upon the request of a complainant if such measures are reasonably available.
 - 3.3.1.2. 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.
 - 3.3.1.3. 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.
 - 3.3.1.4. 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.
- 3.3.2. Interim suspension may be imposed only for one or more of the following purposes:
- 3.3.2.1. 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;
 - 3.3.2.2. To ensure a student's own physical or emotional safety and well-being; or
 - 3.3.2.3. To ensure the normal operations of the institution where a student poses an ongoing threat of disruption or, or interference with, the normal operations of the institution.
- 3.3.3. During the interim suspension, the student may be denied access to residence facilities, the campus (including classes), and all other institutional activities or privileges.
- 3.3.4. A student placed on interim suspension shall be given written notice of interim measures, which shall include:
- 3.3.4.1. The reasons for the interim suspension;
 - 3.3.4.2. The parameters of the interim suspension; and
 - 3.3.4.3. Information concerning the right to appeal the interim suspension.
- 3.3.5. Interim Suspension Appeal Process
- 3.3.5.1. The student must submit a written request for a meeting to the Senior Student Affairs Officer.

3.3.5.2. 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.

3.3.5.3. The Senior Student Affairs Officer has sole discretion regarding interim measures.

3.4. Informal Resolution

3.4.1. 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.

3.4.1.1. 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.

3.4.1.2. 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.

3.4.2. Informal resolution may be reached where:

3.4.2.1. The parties involved mutually agree to a full resolution of the alleged misconduct that is acceptable to the Student Conduct Officer.

3.4.2.1.1. This must be documented in writing and signed by the complainant, respondent, and Student Conduct Officer.

3.4.2.2. The respondent waives a formal hearing by admitting to the misconduct and accepting the proposed conduct sanctions.

3.4.2.2.1. This must be documented in writing and signed by the respondent and the Student Conduct Officer.

3.4.2.2.2. This type of informal resolution is not available in matters involving allegations of Human Rights violations.

3.4.3. 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.

3.4.3.1. This must be documented in writing and signed by the respondent and the Student Conduct Officer.

3.4.3.2. In matters involving allegations of Human Rights violations, the complainant must also agree in writing to this partial informal resolution.

- 3.4.4. 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.
 - 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.
 - 3.4.6. 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.
 - 3.4.6.1. 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.
- 3.5. Formal Resolution
- 3.5.1. If the alleged misconduct is not fully resolved through informal resolution, any unresolved matter proceeds to a hearing.
 - 3.5.2. The composition of the Student Conduct Panel shall be determined as follows:
 - 3.5.2.1. 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:
 - 3.5.2.1.1. Option 1 – only the Student Conduct Officer; or
 - 3.5.2.1.2. 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,
 - 3.5.2.2. 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.
 - 3.5.2.3. 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.

- 3.5.3. Hearings shall be conducted by a Student Conduct Panel according to the following guidelines:
- 3.5.3.1. 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.
 - 3.5.3.2. The Chair shall have sole discretion and final decision-making authority over the following:
 - Whether an individual's conduct interferes with the hearing and requires that individual's removal;
 - Whether written information, materials, documents, and statements submitted are relevant and will be accepted for consideration by the Student Conduct Panel;
 - All questions about the interpretation of the student conduct process; and
 - Whether to have separate or joint hearings when a hearing would involve more than one respondent;
 - 3.5.4. 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.
 - 3.5.5. 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.
 - 3.5.6. 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:
 - 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 EEO Coordinator will be provided to the complainant, respondent, and the Student Conduct Panel members.
 - 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.
 - 3.5.7. 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.

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

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

3.5.9.1. 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.).

3.5.9.2. The Chair will remind the respondent:

- Of the materials that the Student Conduct Panel received prior to the hearing;
- Of the right to have an advisor present;
- Of the right to refuse to speak as a witness against him/herself;
- 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;
- Of the alleged behavior that would be a violation of the Student Code; and
- Of the section(s) of the Student Code alleged to have been violated.

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

3.5.9.3.1. 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.

3.5.9.3.2. 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.

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

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

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

3.5.9.3.6. 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.

- 3.5.9.4. The Chair will provide the respondent the opportunity to engage in the hearing. If the respondent agrees to engage, then:
- 3.5.9.4.1. 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.
 - 3.5.9.4.2. 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.
 - 3.5.9.4.3. The Student Conduct Panel will then ask questions of the witness.
 - 3.5.9.4.4. The Chair will ask the complainant for any questions for the witness. The complainant will provide the Chair any questions in writing.
 - 3.5.9.4.5. The Chair will ask the witness any questions provided by the complainant that the Chair determines to be relevant.
 - 3.5.9.4.6. 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.
- 3.5.9.5. 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.
- 3.5.9.6. The Student Conduct Panel will meet in a closed session to discuss and make its recommendation, which closed session shall not be audio recorded.
- 3.5.10. 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.
- 3.5.11. 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:
- Concise statements of each factual finding;
 - Brief explanations of whether and why the factual findings support a conclusion that the conduct either violated or did not violate the Student Code;
 - These must address each factual element that must be satisfied to establish that conduct has violated the Student Code.

- Any initial, interim, or final decisions by the institution; and
 - If a violation is found, recommendations of appropriate conduct sanctions and supporting rationale for the conduct sanctions.
- 3.5.12. 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.
- 3.5.12.1. 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.
- 3.5.12.2. 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.
- 3.5.13. 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 C.3.5.1 below for more information.
- 3.5.13.1. In matters involving allegations of Academic Misconduct, the Chair's written findings shall also be provided to the faculty member.
- 3.5.13.2. In matters involving allegations of Human Rights violations, the complainant must also be provided information about appeal rights.
- 3.5.14. 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.
- 3.5.14.1. 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.
- 3.5.14.2. 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
- 3.5.14.3. Except as required by law, the institution shall not be required to change the form in which the record is maintained.

3.6. Sanctions

3.6.1. Individual Conduct Sanctions

- 3.6.1.1. 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.
- 3.6.1.1.1. 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.
 - 3.6.1.1.2. 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.
 - 3.6.1.1.3. 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.
- 3.6.1.2. 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).
 - 3.6.1.3. 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:
 - 3.6.1.3.1. 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)
 - 3.6.1.3.2. Where the allegations against the respondent would also constitute a crime of violence or non-forcible sex offense as defined by FERPA; or
 - 3.6.1.3.3. Where the allegations against the respondent would also constitute Human Rights violations. In this circumstance, the rationale for the result must also be included.
 - 3.6.1.3.4. 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.
 - 3.6.1.4. 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.
 - 3.6.1.5. 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.

3.6.1.6. 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.

- Warning – A statement to the respondent that the respondent has violated the Student Code of Conduct.
- 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.
- 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.
- Fines – Monetary payments.
- Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service, money, or material replacement.
- Educational Sanction – work assignments, essays, service to the Institution, community service, workshops, or other related educational activities.
- 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.
- 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.
- 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.
- 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.

- 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.
- 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.

3.6.1.7. 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.

3.6.1.8. Students enrolled in one institution shall be held accountable for their conduct while visiting or enrolled at other institutions. Students may be required, as a condition of continued enrollment, reenrollment, or transfer or admission to another institution, 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.

3.6.1.8.1. 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.

3.6.1.8.2. 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.

3.6.2. Organizational Conduct Sanctions

3.6.2.1. The following conduct sanctions may be imposed upon organizations:

- Those conduct sanctions listed above in Section C.3.5.1.

3.7. Appeals

3.7.1. Appeal as a Matter of Right

- 3.7.1.1. 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.
- 3.7.1.2. 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.
 - 3.7.1.2.1. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;
 - 3.7.1.2.2. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;
 - 3.7.1.2.3. 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
 - 3.7.1.2.4. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.
- 3.7.1.3. An appeal shall be limited to a review of:
 - The verbatim record of the initial hearing;
 - Supporting documents submitted as part of the initial hearing; and
 - Supporting documents submitted in support of the appeal reason(s)
- 3.7.1.4. 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.
- 3.7.1.5. 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.
 - 3.7.1.5.1. 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.
 - 3.7.1.5.2. If the recommendation is rejected, the Senior Student Affairs Officer will provide the Appellate Board with a written explanation for his/her decision.
 - 3.7.1.5.3. 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.

- 3.7.1.6. 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.
- 3.7.1.6.1. 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.
- 3.7.2. Appeal to the President of the Institution
- 3.7.2.1. 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.
- 3.7.2.2. 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.
- 3.7.2.3. 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.
- 3.7.2.3.1. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;
- 3.7.2.3.2. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;
- 3.7.2.3.3. 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
- 3.7.2.3.4. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.
- 3.7.2.4. 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.
- 3.7.2.5. 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.
- 3.7.2.6. 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.
- 3.7.2.6.1. 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.

3.7.3. Appeal to the Board of Regents

- 3.7.3.1. 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.
- 3.7.3.2. 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:
 - Supporting arguments and documentation;
 - 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.
- 3.7.3.3. Written appeals that fail to include supporting arguments and documents, and the documentation provided by the institution will be rejected.
- 3.7.3.4. 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.
 - 3.7.3.4.1. 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.
 - 3.7.3.4.2. The Executive Director will provide a written decision to the parties, and to the President.
 - 3.7.3.4.3. 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.
- 3.7.3.5. 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.
 - 3.7.3.5.1. The Executive Director will have fifteen (15) working days within which to attempt, at his or her discretion, a resolution through informal means.

- 3.7.3.5.2. 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.
- 3.7.3.5.2.1. Contested case proceedings may be conducted under protective orders entered pursuant to SDCL §§ 1-26-19 and 15-6-26(c).
- 3.7.3.5.2.2. 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.

FORMS / APPENDICES:

None

SOURCE:

BOR February 1969; RR, 12:06, 1977; BOR 1980; BOR April 1987; BOR June 1990; BOR December 1994; BOR October 1996; BOR December 1999; BOR March 2006; BOR December 2006; BOR August 2009; BOR August 2011; BOR December 2013; BOR June 2014; BOR August 2015; BOR May 2016; BOR August 2016; BOR December 2017; BOR December 2018; September 2019 (Clerical); BOR August 2020; [BOR June 2021](#).

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Housing & Meal Plan Requirements

NUMBER: 3:6

A. PURPOSE

To establish the expectations of student participation in institutional housing and meal plans as well as to set up a framework for conduct and safety requirements in the residence facilities.

B. DEFINITIONS

1. **Student:** 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.

C. POLICY

1. Student Housing Requirement

1.1. Live On-Campus Requirement

Students who are enrolled at a university for a minimum of six (6) on-campus credits are required to live in on-campus housing during the first two (2) years following their high school graduation. Institutions may grant waiver exceptions to the housing requirement based on the waiver exceptions.

1.2. Waiver Exceptions

Waiver exceptions to the housing requirement will ordinarily be granted:

- To students who are married
- To students with dependent children who reside with them
- To students who reside full-time during the academic year at the primary residence of the parent(s) or legal guardian(s) within a designated radius determined by each institution
- To students living in Greek housing who have met campus housing release requirements
- To students who are non-degree seeking
- When residence hall occupancy exceeds manageable capacity

- To students who hold a currently valid written certification regarding the medical use of cannabis. For purposes of this section, a written certification is a document dated and signed by an authorized practitioner, stating that in the practitioner's professional opinion the patient (student) is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition.
- At the discretion of the institution, after considering the individualized circumstances and determining that the circumstances merit a waiver

2. Meal Plan Requirement

2.1. Meal Plan Requirement

All students living in on-campus housing are required to have a meal plan. Institutions may grant waiver exceptions to dine elsewhere.

2.2. Waiver Exceptions

- 2.2.1. Waiver exceptions to the meal plan requirement may be granted at the discretion of the institution, after considering the individualized circumstances and determining that the circumstances merit a waiver.

3. Process for Requesting Waiver from the Housing Requirement, Meal Plan Requirement, or Both

Each institution shall create a process through which students can request a waiver from the housing requirement, meal plan requirement, or both.

4. Disclosure Requirements

4.1. Disclosure of Criminal History, Including Sex Offender Status

Each student, student's spouse, dependents or household members, who reside in a housing facility operated by the institution shall disclose on the application form the following:

- Whether he or she is required to register as a sex offender pursuant to law
- Whether he or she has a criminal history of a felony offense that includes a conviction, guilty plea, no contest plea, or suspended imposition of sentence that has not been discharged
 - For each felony offense, provide details identifying any jurisdiction, date of the offense, circumstances of the offense, the sentence or parole conditions and other facts or circumstance that he or she believes to be relevant
 - Disclosure is not required if the felony offense resulted in adjudication as a delinquent child or as a child in need of supervision

5. Criminal History Resulting in the Loss of Privilege to Live in Institutional Housing

The following typically result in the loss of an individual's privilege to live in institutional housing:

- 5.1. No person who is required by law to register as a sex offender may reside in any housing facility operated by the institution
- 5.2. When a person has been found to have committed a felony offense involving use or sale of illegal drugs or involvement in a crime of violence which did or could have resulted in injury to a person
- 5.3. When a person has been found to have committed a felony offense where the circumstances of the offense otherwise reasonably suggest that placement within a housing facility operated by the institution may place the individual into settings that are similar to those in which the original offense occurred

6. Denial of Institutional Housing

The director of housing of each institution may deny an applicant for institutional housing. The denial notice shall identify the process to request a review of the determination.

7. Review of Denial to Reside in Institutional Housing Facilities

Any person, other than a registered sex offender, who has been denied residence in a housing facility operated by the institution may request a review of the determination by the Senior Student Affairs Officer or their designee and shall be provided an opportunity to submit such writings as the person deems necessary and helpful to explain why the institution should permit the person to reside in one of its housing facilities.

8. Residence Hall Rooms and Apartments Private Places

The students' individual residence hall rooms and individual apartments constitute private places to which the general public does not have an unrestricted access right.

9. Institution Carries No Liability for Personal Effects

The institution shall not carry insurance covering loss or damage to those students' personal effects and does not assume responsibility for such loss or damage. As such, it is suggested that students purchase renter's insurance to cover their personal belongings.

10. Alternative Housing During Official Institutional Breaks

Housing office staff shall make reasonable efforts to assist students who are unable to leave the campus during official institutional vacations to locate housing alternatives.

11. Conduct Expectations

The institutions shall establish and publish institutional conduct or behavior regulations that ensure responsible and orderly campus life and promote the general welfare.

11.1. Alleged violations of these regulations shall be processed through the established institutional disciplinary procedures.

12. Residence Hall Security

Each institution shall develop and implement residence hall security policy statements that are designed to provide the reasonable security of residents and institutional property. Institutional security measures must include the following:

- 12.1. Signage that designates that residence halls are for the exclusive use of residents and their guests.
- 12.2. Designation of public and restricted areas and access regulations related thereto.
- 12.3. Planned educational programs aimed at education of residents regarding their security responsibilities.
- 12.4. One or more of the following security monitoring measures during all hours when access to public areas is unrestricted:
 - Locked entryways to restricted areas
 - Staff or mechanical monitoring of public entryways
 - A consistently applied and enforced escort policy
- 12.5. Other measures deemed necessary and appropriate by the President of each institution.

FORMS / APPENDICES:

None

SOURCE:

RR, 12:04, 1977; BOR, June 1978, September 1979; April 1987; March 1993; December 1995; May 2006; December 2010; August 2019; June 2021.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Non-Faculty Exempt Employment Provisions

NUMBER: 4:4

A. PURPOSE

To define the process and provisions relating to the appointment, employment, conduct expectations, compensation practices, and grievance procedures for Non-Faculty Exempt (NFE) employees. This policy supersedes all other BOR policies relating to NFE employees.

B. DEFINITIONS

1. **Day:** Calendar days
2. **Executive Director:** The chief executive officer of the SD Board of Regents.
3. **Grievance:** An alleged misinterpretation, misapplication or violation of a specific term or provision of Board policy, or other agreements, contracts, policies, rules, regulations or statutes that directly affect terms and conditions of employment for the individual employee.
4. **Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and the Visually Impaired, South Dakota School for the Deaf, University of South Dakota, and the Office of the Executive Director.
5. **Internal Equity Adjustment:** A salary adjustment to reduce or eliminate an internal pay rate disparity within an Institution or defined Institutional department.
6. **Market Equity Adjustment:** A salary adjustment to reduce or eliminate an external pay rate disparity using recognized market data and peer groups.
7. **Non-Faculty Exempt (NFE):** Employees who are exempt from the Civil Service Act by virtue of their administrative and professional functions.
8. **Performance Adjustment:** A salary adjustment made in recognition of work performance that meets or exceeds performance standards documented through an established review process.
9. **President:** The chief executive officer of a South Dakota Board of Regents University.
10. **Student Employee:** Student employees, including teaching and research fellows, are exempt from the Civil Service System. Student employees are considered temporary employees and not eligible for benefits unless meeting the requirements under the Affordable Care Act.
11. **Superintendent:** The chief executive officer of a South Dakota Board of Regents Special School.

C. POLICY

1. Appointment

All NFE Institutional personnel will be employed upon the approval of the President, Superintendent, or Executive Director. BOR Policies 1:5 and 1:6 outline when Board approval is required for appointment.

- 1.1. If an Institution wishes to hire a candidate who was previously terminated for cause, or who resigned in lieu of termination, the President or their delegate, and the Office of the Executive Director shall be advised of the circumstances surrounding the termination. The President, Superintendent, or Executive Director will approve or deny the rehire based upon legitimate business and position related reasons.
- 1.2. If an Institution appoints a candidate who is employed by another Institution, the Institutions shall share position related information with the requesting academic or human resource office, and the appointing authority will consider that legitimate business and position related information in the hiring process prior to appointment.

2. Employment Contracts

- 2.1. Upon appointment of a benefit-eligible employee, the University or Special School will issue an employment contract, which may be renewed annually at the discretion of the University President or Superintendent.
- 2.2. NFE employment contracts shall not be more than one year in length, unless otherwise specified in, and issued pursuant to, BOR Policy 4:49.
- 2.3. During a valid contract term, NFE employees may be reassigned for non-discriminatory purposes without cause to any position, so long as the salary is not decreased during the term of the current contract.
- 2.4. NFE Employment contracts may be non-renewed without cause by providing written notice of the non-renewal to the NFE employee prior to the expiration of the current contract term.
- 2.5. An NFE employment contract creates no obligation of the Institution for continued employment beyond the term of the contract and non-renewal of the contract is not an action which can be grieved under BOR or Institutional policy.
- 2.6. NFE employment contracts may be terminated for cause, or as a part of a reduction in force in conformity with this policy and applicable law.

3. Compensation Administration

- 3.1. All compensation adjustments that meet the criteria identified in BOR Policy 1:5(5) and 1:6(4) require Board approval.
- 3.2. Compensation upon Hire or Transfer
 - 3.2.1. Compensation for employees at hire or transfer will be set comparative to the market value of the position as well as the internal equity of the Institution.
 - 3.2.2. Institutional hiring authorities shall consult with human resources on compensation decisions at hire or transfer, and the Institution shall consider the

position requirements, institutional priorities and the candidate's education, experience, skills, and abilities.

3.3. Annual Salary Adjustments

Decisions concerning annual salary policy adjustments will be made in accordance with legislative process and BOR policies. The President, Superintendent or Executive Director determines the Institutional priorities and establish guidelines for salary allocations.

3.3.1. Administrators responsible for making individual salary recommendations will follow approved guidelines:

3.3.1.1. The Legislature will identify the salary pool and the Board will approve a total salary policy pool for which Institutions can distribute based on market, performance or institutional priorities.

3.3.1.2. The President, Superintendent or Executive Director can apply institutional priorities to a specific department or area of concentration so long as it is a portion of the total salary policy pool.

3.3.1.3. Administrator recommendations will be reviewed by the appropriate Vice President and/or President.

3.3.1.4. All annual salary policy for benefit eligible employees must be applied through the HRFIS system, those meeting the criteria for Board approval in BOR Policy 1:5 or 1:6 must be report to the Board for approval at its regularly scheduled meeting in May.

3.4. Other Base Salary Adjustments

3.4.1. Additional Duty Pay: An increase, permanent or temporary, to base salary not exceeding ten percent (10%) may be granted based on a documented additional workload.

3.4.2. Duties and Responsibilities Changes: An increase based upon significant change in the duties, scope and responsibility of a position as documented in an approved position description.

3.4.2.1. The adjustment shall be consistent with previous institutional priority decisions of the Institution and must be made in light of internal equity.

3.4.3. Internal Equity Adjustment: An increase to base salary to reduce or eliminate documented institutional internal salary disparities that are found after an analyses of position duties, individual qualifications, experience, longevity, work performance or institutional priorities.

3.4.4. Market Adjustment: An increase to base salary to reduce or eliminate a documented external salary inequity.

3.5. Instruction of Academic Courses

3.5.1. An NFE employee may be allowed to instruct an undergraduate or graduate course with the appropriate approval process at the Institution.

- 3.5.2. Compensation for the instructional work should be comparable to the rates provided to temporary faculty for comparable instruction.
- 3.5.3. If the instructional workload is assigned as an overload, the work related to course instruction should be completed outside of the scope of the employee's regular position.

4. Reduction in Force

4.1. An Institution may lay off or reduce the percent time of an NFE employee during a current contract term for the following reasons:

- 4.1.1. Legislative action;
- 4.1.2. Loss of grant, contract or other funding;
- 4.1.3. Governor's executive order; or
- 4.1.4. Reorganization. An Institution may only use this as a means to lay off an employee for such occasions as privatization, the movement of a function to another state agency, the elimination of an organizational function, the consolidation of departments or functions, or a reduction in a program's activities.

4.2. Layoff Notification

4.2.1. An employee shall be given a minimum of fourteen (14) calendar day's written notice prior to the effective date of the layoff or reduction in percent time. The notice shall include:

- 4.2.1.1. The effective date and reason(s) for the layoff;
- 4.2.1.2. Information concerning the right to appeal;
- 4.2.1.3. The timeline in which the employee may present reasons in writing why the layoff should not take place;
- 4.2.1.4. Notice is effective the day of deposit in the mail of a certified notice, the date electronically sent, or the date personally delivered to the employee.

4.2.2. A copy of the layoff notification should be forwarded to the system human resources officer at the time the action is taken.

4.3. Priorities for Layoff

4.3.1. When more than one NFE employee exists in any classification, department, or geographic location designated for a reduction in force, the following criteria will be used to identify the employee(s) who will be laid off or have reduced hours:

- 4.3.1.1. Performance;
- 4.3.1.2. Longevity with the Institution and employment status;
- 4.3.1.3. Special knowledge, skills, abilities and potential of the employee;
- 4.3.1.4. Type and mixture of funding for position and fund status;

4.3.1.5. Future needs of the department;

4.3.1.6. Geographic location.

4.4. Benefits

4.4.1. Any accrued and vested leave will be paid in accordance with South Dakota administrative rules and statutes.

5. Code of Conduct

Employees are expected to maintain an effective, orderly, safe and efficient work environment.

5.1. Professional Conduct/Misconduct Defined

5.1.1. Disciplinary action, up to and including termination, may be taken, upon notice and a right to respond, for conduct within or outside the scope of employment. Disciplinary action may be taken for just cause, including, but not limited to the reasons listed below:

5.1.1.1. The employee has violated any Board of Regents or institutional policy;

5.1.1.2. The employee violated a confidentiality agreement, non-disclosure agreement, policy, regulation, or law;

5.1.1.3. The employee disrupts the efficiency or morale of the department;

5.1.1.4. The employee is careless or negligent with the money or other property of the state or property belonging to any person receiving services from the state or has stolen or attempted to steal money or property of the state or property belonging to any person receiving services from the state;

5.1.1.5. The employee has failed to maintain a satisfactory attendance record based on the established working hours or has had unreported or unauthorized absences;

5.1.1.6. The employee has made a false or misleading statement or intentionally omitted relevant information during the application and selection process;

5.1.1.7. The employee has intentionally falsified a state record or document;

5.1.1.8. The employee has violated statutes or standard work rules established for the safe, efficient, or effective operation of the campus;

5.1.1.9. A failure to correct deficiencies in performance;

5.1.1.10. A breach of recognized published standards of professional ethics for the employee's profession;

5.1.1.11. Conviction of any felony or the conviction of a misdemeanor involving immoral actions;

5.1.1.12. The unlawful or unauthorized manufacture, distribution, dispensing, possession or use of alcohol, marijuana (including cannabis used or possessed for medicinal purposes), or other controlled substances while on duty or while on premises owned and controlled by the Board of

Regents or used by the Board of Regents for educational, research, service or other official functions.

5.1.1.13. Insubordination,

5.1.1.14. The use of alcohol, marijuana (including cannabis used or possessed for medicinal purposes), or other controlled substances, which impairs performance of duties.

5.1.1.14.1. An employee has a duty to report to work able to perform the duties of their position, notifying their supervisor when they are not able to perform the duties of their position, and notifying their supervisor when they observe a colleague who is not able to perform their duties.

5.1.1.14.2. Impairment in the performance of duties may be indicated by, but is not limited to, the following: employee self-reports, interactions with supervisors or co-workers, interactions with students, manual dexterity, coordination, alertness, speech, vision acuity, concentration, response to feedback, suicidal or threatening statements, changes in personal hygiene, memory, excessive absenteeism, a pattern of absenteeism, and/or the odor of alcohol or marijuana.

5.1.1.14.3. In the event of an employee self-report, a report of suspected impairment by a co-worker or student, or a supervisor's observation of indicia of impairment, the supervisor will assess the impairment of the employee and risk of safety to the employee and others.

5.1.1.14.3.1. If the supervisor determines there is no impairment or risk, the supervisor will keep a record of the event and take no further action.

5.1.1.14.3.2. If the supervisor determines there is a risk to the employee or others, in that the employee is unable to perform the essential functions of their position or poses a safety risk to the employee and others, the supervisor will keep a record of the event and:

5.1.1.14.3.2.1. Notify the institution's human resources department;

5.1.1.14.3.2.2. Refer the employee to the Employee Assistance Program;

5.1.1.14.3.2.3. Require the employee to undergo drug testing at the employee's expense;

5.1.1.14.3.2.4. Contact university police, if appropriate;

5.1.1.14.3.2.5. Place the employee on a leave of absence as needed; and/or

5.1.1.14.3.2.6. Implement disciplinary measures.

~~5.1.1.14.—~~

5.1.1.15. Theft of state owned or controlled property.

5.1.1.16. Intentionally and wrongfully counseling, inciting, or participating in a prohibited student or employee activity.

5.1.1.17. Any substantial or irremediable impairment of the ability of a staff employee to perform assigned duties.

5.2. Termination of Faculty Appointment

If an NFE employee holds faculty rank, and/or tenure, then the appropriate faculty termination procedures shall be applied.

6. Grievance Procedures

The grievance procedure provides a just and equitable method for resolution of grievances that affect the terms and conditions of employment.

6.1. General Provisions

6.1.1. Grievance procedures are available to NFE employees.

6.1.2. No offer of settlement of a grievance by either party shall be admissible as evidence in later grievance proceedings or elsewhere.

6.1.3. No settlement of a grievance shall constitute a binding precedent in the settlement of similar grievances.

6.1.4. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and it will be deemed withdrawn.

6.1.4.1. The parties to any grievance may, by mutual written agreement, waive the time limits provided herein.

6.1.5. If the administration fails to act in time, the grievant may proceed to the next review level by filing the grievance with the appropriate official and within the timeframe required under Section 6.2 and any subsequently issued decision on the matter at the bypassed level will be void.

6.1.6. The Board, administration, or supervisors shall not retaliate against any non-faculty exempt employee for filing or participating in a grievance.

6.1.7. Employees who voluntarily terminate their employment shall have their grievances under this policy immediately withdrawn and shall not benefit by any later settlement of an individual or group grievance.

6.1.8. Grievance records shall not be maintained in the individual's personnel files but shall be maintained in a separate file.

6.1.9. Required written notice may be sent via the Postal Service, delivered by hand, or sent through electronic mail.

6.1.9.1. Notice will be effective on the date postmarked by the Postal Service, on the date delivered by hand or on the date sent electronically, provided that, where disruption of institutional electronic communications systems

interferes with delivery of an electronic notice, the effective date of notices sent electronically will be delayed until service has been restored.

- 6.1.10. Grievances will be filed with the lowest administrative level having the authority to dispose of the grievance. If the office of the President, Executive Director, or Vice President represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed at Step 2, Step 3 or Step 4 as applicable.
 - 6.1.11. Throughout the grievance process, the grievant shall include copies of the original grievance and all responses and decisions from prior steps, if any.
 - 6.1.12. Throughout each step of the grievance process, any decision issued by the institution shall be provided simultaneously to the grievant and each administrator who issued a decision in prior steps, if any. All decisions issued by the institution in response to a grievance shall include a statement of findings and conclusions supporting the decision.
 - 6.1.13. Informal resolution may be attempted by the parties to a grievance at any point during the grievance procedure. If a grievance is resolved informally, the institution will be under no obligation to proceed further with the grievance.
 - 6.1.14. If the deadline for any action(s) set forth herein falls on a Saturday, Sunday, legal holiday, or any other day in which the institution's administrative offices are closed, the timeframe for the action shall continue to run until the end of the first day thereafter when the institution's administrative offices are open.
- 6.2. Grievance Procedures
- 6.2.1. Step One – Grievance to Immediate Supervisor
 - 6.2.1.1. An employee may file a grievance in writing with the immediate supervisor within fourteen (14) days of the date on which the grievant knew, or should have known, of the action or condition which occasioned the grievance.
 - 6.2.1.2. The supervisor, upon receipt of the grievance, will investigate and provide a response to the grievant within seven (7) days.
 - 6.2.1.3. If the employee is not satisfied with the response, the employee has seven (7) days to proceed to the next step.
 - 6.2.2. Step Two – Grievance to Vice President
 - 6.2.2.1. The employee may submit, in writing, a grievance of decision of the supervisor to the appropriate Vice President of the institution.
 - 6.2.2.2. A written response shall be delivered to the employee within fourteen (14) days following receipt.
 - 6.2.2.3. If the employee is not satisfied with the response, the employee has seven (7) days to proceed to the next step.
 - 6.2.3. Step 3 – Grievance to President, Superintendent, or Executive Director

- 6.2.3.1. The employee may grieve, in writing, the decision from step two to the President, Superintendent, or Executive Director.
 - 6.2.3.2. The President, Superintendent, or Executive Director shall investigate the matter, personally or through an appointed designee or panel.
 - 6.2.3.3. A written response shall be delivered to the grievant within fourteen (14) days following receipt.
 - 6.2.3.4. If the employee is dissatisfied with the response rendered, the employee has seven (7) days following receipt to proceed to step four.
- 6.2.4. Step 4 – Grievance to the Board
- 6.2.4.1. The employee may grieve the decision of the President to the Board.
 - 6.2.4.2. The Executive Director shall select a hearing examiner within fourteen (14) days following receipt of the grievance.
 - 6.2.4.3. The hearing examiner shall hold a hearing pursuant to SDCL ch. 1-26 with all parties involved in the grievance no later than thirty (30) days after the hearing examiner is appointed. The hearing examiner shall prepare a proposed determination including findings of fact and conclusions of law for the Board's consideration. The proposed determination shall be provided to the board within thirty (30) days of the hearing or fourteen (14) days prior to the next regularly scheduled Board meeting, whichever is sooner.
 - 6.2.4.4. The Board's decision shall be issued to the employee within ten (10) days from the date the grievance is considered by the Board. If the Board fails to respond within the specified time period, or if the employee is not satisfied with the decision, the employee may grieve in accordance with South Dakota Codified Law Chapter 1-26

FORMS / APPENDICES:

None.

SOURCE:

BOR August 2019. BOR May 2021; [June 2021](#).

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Faculty Discipline and Disciplinary Procedures

NUMBER: 4:14

1. Discipline and Disciplinary Procedures

A. Preamble

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

B. Alternative Measures

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

Taking into consideration the circumstances that warrant discipline, past service, scholarly achievements and other mitigating or aggravating circumstances, discipline may include any of the following alternative actions:

- 1) Warnings;
- 2) Warnings to be filed with the personnel file of the faculty member;

- 3) Required training or current substance abuse treatment at the cost of the faculty member;
- 4) Suspension from duties with, or without, loss of pay commensurate therewith;
- 5) Reassignment;
- 6) Demotion;
- 7) Discharge.

C. Interim Suspension

Unlike a disciplinary suspension under paragraph B (4) above, an interim suspension from duties during the pendency of an active review of allegations of conduct warranting discipline is not deemed to be a discipline under this article.

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

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

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

D. Procedures

The following procedures apply to all disciplinary measures other than warnings and warnings filed in the personnel file.

The disciplinary procedure comprises two stages. The first stage is designed to provide an initial check against mistaken decisions, by creating an opportunity to determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. At the first stage, the faculty member will receive oral or written notice of the allegations, an explanation of the

evidence, and an opportunity to tell the faculty member's side of the story. At the close of the first stage conference the administration may impose the selected discipline. The second stage assures clear and actual notice of the reasons for the disciplinary action in sufficient detail to enable presentation of evidence relating to them; notice of both the names of those who have made allegations against the faculty member and the specific nature and factual basis for the charges; a reasonable time and opportunity to present testimony on any disputed issue of material fact; and a hearing before an impartial decision-maker.

1) *Stage One: Pre-Discipline Conference*

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

2) *Stage Two: Post-Discipline Hearing Rights*

Faculty members who have been disciplined after completion of Stage One personal conferences may challenge the action through the grievance procedures established in Board Policy No. 4:7. Any grievance appeal under this section will begin at Step 3 of Board Policy No. 4:7.I.E.

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

2. **Unprofessional Conduct**

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

governmental regulations and contractual restrictions that also establish or imply standards of conduct needed to protect the special interests that justify the regulations and restrictions.

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

- A. Neglect of duty, misconduct, incompetence, abuse of power or other actions that manifest an unfitness to discharge the trust reposed in public university faculty members or to perform assigned duties;
- B. A failure to correct deficiencies in performance in compliance with a constructive plan;
- C. A breach of recognized published standards of professional ethics;
- D. Conviction of any felony or the conviction of a misdemeanor involving moral turpitude;
- E. Unauthorized absence from duties without prior notification or justifiable cause or excuse for the absence;
- F. The manufacture, distribution, dispensing, possession or use of alcohol, marijuana (including cannabis used or possessed for medical purposes) or controlled substances shall be cause for discipline where:
 - 1) The conduct is unlawful or unauthorized and occurs while acting within the scope of employment; while on premises owned and controlled by the Board of Regents or used by the Board of Regents for educational, research, service or other official functions; or while participating in any capacity in activities sponsored by the Board; or
 - 2) The conduct has been authorized and is lawful, but the use significantly impairs the faculty member in the performance of his duties; or
 - a) A faculty member has a duty to report to work able to perform the duties of their position, notifying their supervisor when they are not able to

perform the duties of their position, and notifying their supervisor when they observe a colleague who is not able to perform their duties.

b) Impairment in the performance of duties may be indicated by, but is not limited to, the following: employee self-reports, interactions with supervisors or co-workers, interactions with supervisors, manual dexterity, coordination, alertness, speech, vision acuity, concentration, response to feedback, suicidal or threatening statements, changes in personal hygiene, memory, excessive absenteeism, a pattern of absenteeism, and/or the odor of alcohol or marijuana.

c) In the event of an employee self-report, a report of suspected impairment by a co-worker or student, or a supervisor's observation of indicia of impairment, the supervisor will assess the impairment of the employee and risk of safety to the employee and others.

a. If the supervisor determines there is no impairment or risk, the supervisor will keep a record of the event and take no further action.

b. If the supervisor determines there is impairment or risk to the safety of the employee or others, in that the employee is unable to perform the essential functions of their position or poses a safety risk to the employee or others, the supervisor will keep a record of the event and:

i. Notify the institution's human resources department;

ii. Refer the employee to the Employee Assistance Program;

iii. Require the employee to undergo drug testing at the employee's expense;

iv. Contact university police, if appropriate;

v. Place the employee on a leave of absence if needed; and/or

vi. Implement disciplinary measures.

3) Other conduct that involves a failure to conform to laws regulating alcohol and controlled substances and that results in injury to the person or the rights of others.

G. The failure or refusal to follow or comply with Board or institutional policies, regulations or published work rules or with lawful orders or instruction of a superior;

H. Theft, misuse, abuse or wrongful destruction of state owned or controlled property controlled real, personal or intellectual property, including information systems, databases and similar resources;

I. Participation in strike activities proscribed by SDCL Chapter 3-18;

J. Violations of rights assured to students, employees or others under federal or state laws or regulations or Board or institutional policies and regulations;

- K. Use of the powers and prerogatives of a faculty member to coerce or to induce others to engage in unlawful conduct or conduct prohibited under Board or institutional policy;
- L. Failure to comply with health or safety regulations, to require compliance by students or others under a faculty member's supervision or to comply with duly issued emergency orders;
- M. Misrepresentation of authority or other conduct intended to deceive or to assist another to deceive others, irrespective of the motives;
- N. Interference with or disruption of the efficiency or morale of educational, research or service programs, workplaces or organizational units, including actions that violate expectations for civil conduct among professors and when working with students, as provided in Board Policy No. 4:38 (5), or failure at all times to be accurate, to exercise appropriate restraint and to show respect for the opinions of others, as required under Board Policy No. 1.11 (1)(C); or
- O. Any substantial or irremediable impairment of the ability of a faculty member to perform assigned duties.

FORMS/APPENDICES:

None.

SOURCE:

1991 BOR Policy Manual 5:4:2 and 5:4:3; BOR April 2009; BOR December 2010; BOR May 2021; [June 2021](#).

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Drug Free Environment

NUMBER: 4:27

Drug Free ~~Workplace Environment~~ Policy

While South Dakota law may permit certain actions regarding marijuana, the use and possession of marijuana, whether for medicinal or recreational purposes, is prohibited under federal law. Federal law classifies marijuana (cannabis) as a Schedule 1 controlled substance and criminalizes the growth or use of marijuana. The use of medical marijuana is also restricted by federal laws such as the Drug-Free Workplace Act and Drug-Free Schools and Communities Act.

Consequently, any use of marijuana on property owned or controlled by the Board or at events hosted or sponsored by the Board or an institution under the Board is strictly prohibited. The South Dakota Board of Regents is committed to providing a drug-free environment in compliance with federal law, including those requiring drug-free workplaces, schools, and communities.

Nothing in this policy abrogates the applicable requirements of the Americans With Disabilities Act. The South Dakota Board of Regents is committed to providing a drug free workplace. Additional regulations may be found in Board Policy 4:14 subsection 2.F. It is the intent of the Board that all employees regardless of their faculty, exempt or civil service status be subject to the policies set out in those provisions.

DRUG FREE WORKPLACE

Compliance with the Drug-Free Workplace Act of 1988

It is the intent of the Board that all employees regardless of their faculty, exempt, or civil service status be subject to the restrictions set forth herein. Additional regulations for employees may be found in Board Policy 4:4 and 4:14.

The Board strictly prohibits the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances (including cannabis used or possessed for medical purposes) by board employees and agents while on duty or while in any workplace controlled by the Board. For purposes of this prohibition, the workplace shall include premises and vehicles owned and controlled by the Board and other premises and vehicles when used by the Board for education, research, service or other official functions.

Any person violating this prohibition shall be subject to appropriate disciplinary action, which may include termination of employment.

Each person employed by the Board to render services under a federal grant or pursuant to a federal contract will, as a condition of that employment, agree to (i) abide by the terms of this policy and (ii) notify the institutional president or superintendent of any criminal drug statute conviction for a violation occurring in the workplace, that notice being submitted no later than five (5) days after such conviction.

- A. The president or superintendent shall have primary responsibility for the implementation of this policy. Presidents and superintendents may delegate that responsibility to the extent that such delegation is usual and customary.
- B. Each Board employee who is assigned to perform services under a federal grant or pursuant to a federal contract shall be given a copy of the Board's drug-free workplace policy.
- C. Whenever an institution under the Board receives actual notice that an employee rendering services under a federal grant or contract has been convicted of a criminal drug statute violation that occurred in the workplace, the president or his designee shall notify the appropriate federal agency within ten (10) days after receipt of such notice.
- D. Within thirty (30) days of receipt of the notice specified in paragraph (c), an institution shall (i) take appropriate personnel action against the employee, up to and including termination and (ii) in the event that the personnel action stops short of termination, require such employee, at his or her own expense, to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by an appropriate agency.

Compliance with the Drug-Free Schools and Communities Act Amendments of 1989

The Board strictly prohibits the unlawful possession, use or distribution of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances by its students or employees while property controlled by the Board or while participating in any capacity in activities or employments sponsored by it.

No possession, use or distribution of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances is permitted on premises controlled by the Board, except:

- when needed in conjunction with approved research activities;
- when alcohol is possessed, used, or distributed in a lawful manner inside a dwelling occupied by an employee who, as a condition of employment, is required to maintain a residence on premises controlled by the Board;
- when 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 21 years of age;

- when alcohol is possessed, used, or distributed in a lawful manner on premises controlled by the Board that have been designated by the institutional president as places where such possession, use, and distribution may be permitted, subject to such conditions as the institutional president may also prescribe and provided that a notice of such designation and conditions have been filed previously with the executive director;
- when the possession, use, or distribution of the controlled substance is incidental to treatment by a licensed health care professional authorized to prescribe such substances. For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23). Employees who use medical marijuana pursuant to a validly issued written certification when not on property controlled by the Board may subsequently report to work or participate in activities as long as such use does not cause impairment or inability to perform the duties of their position; or
- when alcohol is possessed, used, or distributed in a manner that is expressly approved by a Board Policy.

Board Policy 3.4 contains additional provisions regarding student possession, use, or distribution of alcohol, marijuana, or controlled substances. Board policies 4:4 and 4:14 contain additional provisions regarding employee possession, use, or distribution of alcohol, marijuana, or controlled substances.

Upon compliance with all procedural components of this and related provisions, the presidents and superintendents may execute any certifications of compliance required under the Federal Drug Free Schools and Communities Act Amendments of 1989.

- A. Persons who violate the provisions of this policy will be disciplined.
1. Each campus shall adopt and publish detailed procedures and regulations to govern student infractions of this policy and related policies. Minimum Regental standards may be found in Board Policy 3.4, which policy is also the default policy in the absence of institution-specific policies governing student conduct.
 2. Disciplinary procedures for employees vary according to the individual's status as a Civil Service Act employee, as a non-faculty employee who is exempt from the Civil Service Act, as a faculty member ~~who is excluded from the bargaining unit~~, or as a faculty member who is within the Special Schools bargaining unit. Disciplinary measures shall be imposed pursuant to those procedures that are appropriate based on the employee's classification.
 3. Employees whose unlawful possession, use, or distribution of alcohol, marijuana or controlled substances violates this policy may be subject to those disciplinary measures set out in Board Policy 4.14, Board Policy 4.44, and ARSD 55:10:07:01; except that absent extraordinary circumstances, a second infraction will be deemed just cause for termination.

4. Where the infraction constitutes a felony offense under South Dakota or federal law, the essential facts of the infraction will be referred to law enforcement authorities. Referral of a matter to law enforcement authorities will not require suspension of disciplinary proceedings nor delay imposition of discipline.
- B. Institutions may elect to use student fee collections to fund drug or alcohol assessment, counseling, treatment, rehabilitation, or re-entry programs for students. Employee entitlements to drug or alcohol assessment counseling, treatment, rehabilitation, or re-entry programs are governed by Bureau of Human Resources. Current information about such entitlements may be obtained from personnel officers.
- C. Each institution will prepare and will distribute annually to all higher education students, parents of students attending the special schools and employees written statements that set forth in detail the following:
1. Institutional and Regental policies that regulate the possession, use, or distribution of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances, together with the relevant disciplinary procedures and sanctions;
 2. Legal sanctions under local, state, or federal law for the unlawful possession or distribution of illicit drugs and alcohol;
 3. Health risks associated with the use of alcohol, marijuana, or controlled substances; and
 4. Any available programs for alcohol, marijuana, or controlled substances counseling, treatment, rehabilitation or re-entry.
 5. The special schools shall also:
 - a. Maintain age-appropriate, developmentally based drug and alcohol education and prevention programs for students in all grades;
 - b. Assure that the drug and alcohol education and prevention programs address the legal, social, and health consequences of drug and alcohol use, provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol and convey to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful;
 - c. Provide students with a copy of the standards of conduct required under subsection C.1 above; and
 - d. Notify parents and students that compliance with the standards of conduct required under subsection C.1 above is mandatory.

- D. At the June 1992 meeting of the Board, and biennially thereafter, each institution will report:
1. Evidence about the degree to which its alcohol, marijuana, and controlled substances programs have been effective in reducing academic, social, and employment problems associated with the use of such substances;
 2. Any changes in institutional or Regental policies that might enhance program effectiveness; and
 3. Data showing what disciplinary measures were imposed on students or employees pursuant to the foregoing policies.
 - a. The data provided in response should contain sufficient detail to demonstrate that sanctions were imposed consistently and equitably among those students and employees who became subject to discipline.
- E. Whenever an officially recognized organization is permitted under institutional policy to conduct a social function at which alcohol will be provided, it must adhere to the following guidelines:
1. If the function includes the sale of alcoholic beverages, appropriate permits must be obtained in compliance with all of the requirements of Board Policy 6:14.
 2. The organization sponsoring the event should implement precautionary measures to ensure that alcoholic beverages are not accessible or served to persons under the legal drinking age or to persons who appear intoxicated.
 3. Persons of legal age must be designated as servers. They must be trained to monitor alcohol consumption, and they alone may have direct access to alcoholic beverages.
 4. Attractive nonalcoholic beverages must be equally available and on display.
 5. The consumption of alcoholic beverages must be limited to the area designated for the event.
 6. A reasonable portion of the budget for the event must be designated for the purchase of food items, and food must be available throughout the event.

Officially recognized student organizations remain subject to the additional restrictions set forth in Board Policy 3.4 that prohibit expenditure of organizational funds for alcoholic beverages.
 7. Alcohol service must be discontinued well before the event is expected to end.
 8. Alcohol use should never be the primary focus of the event. Drinking contests and other activities that encourage consumption of alcohol are strictly prohibited.

9. Advertising may not mention the availability of alcohol in a prominent way, nor may advertising mention the amount of alcoholic beverages available. If mention is made, equal attention must be given to the availability of nonalcoholic beverages.
10. Officially recognized organizations will have the responsibility to provide those persons conducting the event with copies of these guidelines. They will also be responsible for implementing these guidelines.
11. Officially recognized organizations must agree to abide by the foregoing guidelines as a condition of continued recognition.

~~SOURCE: Current Policy Manual 8.1.12; 15.1.1; 15.1.2; BOR, August 2011; BOR, August 2016.~~

Forms:

None

Source:

BOR Policy Manual 8.1.12; 15.1.1; 15.1.2; BOR August 2011; BOR August 2016; BOR June 2021

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Facilities Use by Private Parties

NUMBER: 6:13

A. PURPOSE

To establish policy and procedures pertaining to the use of institutional facilities by private parties.

B. DEFINITIONS

- 1. Affiliated Entity:** 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 institutions, as well as the State of South Dakota and its political subdivisions, and their instrumentalities.
- 2. Commercial Purposes:** 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.
- 3. Disrupt:** 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.
- 4. Events:** 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.
- 5. Facilities and Grounds:** 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.
- 6. Private Party:** any individual or group other than the institution, its affiliated entities, or their officers, agents, faculty, or staff when acting on their behalf.
- 7. Working Days:** those days when the office of the institution are open for business.

C. POLICY

1. Institutional Facilities

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.

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.
- 1.4. 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.
- 1.5. 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. Private Parties

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,

- 2.1. 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.

- 2.2. 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.
- 2.3. 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.
- 2.4. Each institution shall establish and publicize local rules to implement this policy. These rules shall provide, at minimum, that
 - 2.4.1. Private parties may request permission to use institutional facilities or grounds for meetings or events that will not interfere with the use of the facilities by the institution or institutionally affiliated organizations.
 - 2.4.2. Private parties seeking permission to use institutional facilities or grounds shall complete and submit written applications on forms developed by the institution.
 - 2.4.3. 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
 - 2.4.4. Private parties may not reserve facilities or grounds for regularly scheduled meetings, thereby precluding institutional uses of the facility.
 - 2.4.5. 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.
 - 2.4.6. 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.
 - 2.4.7. 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.
 - 2.4.8. 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.

- 2.4.9. 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 such facilities; however, any such fee(s) must be based on definite and objective criteria that are not content-based.
- 2.4.10. 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 the prior state.
- 2.4.11. 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.
- 2.4.11.2.4.12. Private parties may not use, possess, distribute, or permit the use or possession of controlled substances or marijuana (including cannabis used or possessed for medical purposes) on institutional property. Possession of alcohol on institutional property is governed by Board Policy 4:27.
- 2.5. Each institution shall establish procedures to implement its local rules. These procedures shall provide, at minimum, that
- 2.5.1. 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
- 2.5.2. The institution shall act upon applications no later than the third (3rd) working day after receipt of a completed application.
- 2.5.3. Except as provided in §2.5.5, below, the institution shall grant applications for meetings or events if,
- 2.5.3.1. The applications, and all required attachments, have been completed; and
- 2.5.3.2. The meetings or events will comply with the requirements and limitations contained in this policy and the institutional policy(ies) or rule(s) that implement it;
- 2.5.4. If the institution denies an application for a meeting or event, it shall provide the private party with a written explanation for the denial.
- 2.5.5. The institution may deny applications for meetings or events only if,
- 2.5.5.1. The private party has failed to comply with the requirements of § 2.5.3, above, or the meeting or event or the requested schedule otherwise does not meet the standards stated in that section.
- 2.5.5.1.1. 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.

- 2.5.5.2. 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.
- 2.5.5.3. Any of the following grounds are present:
- 2.5.5.3.1. The application for permit contains a material falsehood or misrepresentation;
 - 2.5.5.3.2. The applicant is legally incompetent to contract or to sue and be sued; or
 - 2.5.5.3.3. 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.
- 2.5.5.4. Private parties 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.
- 2.5.6. 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.
- 2.5.6.1. The appeal must be presented on the approved form.
 - 2.5.6.2. The person receiving the appeal shall not be the same official who issued the original denial
 - 2.5.6.3. The completed written appeal must be presented within five (5) working days after the denial was issued.
 - 2.5.6.4. The appeal shall state specifically facts that, if proven, would demonstrate
 - 2.5.6.4.1. That the denial was based upon an incorrect assessment of material fact or
 - 2.5.6.4.2. 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.
 - 2.5.6.5. 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.

- 2.5.6.6. If the private party 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 working days after the institution issued its response.
- 2.5.6.7. The institutional chief executive officer shall have ten (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, determining whether denial was proper under §2.5.3, and, if the appeal is denied, informing the private party of the discretionary appeal to the Executive Director of the Board of Regents.
- 2.5.6.8. 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 in 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.
- 2.5.6.9. The Executive Director of the Board of Regents shall have ten (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 five (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 § 2.5.3, as a matter of law.
- 2.5.6.9.1. 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
- 2.5.6.9.2. 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.
- 2.5.6.9.2.1. 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.

- 2.5.6.9.3. 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 (10) 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.

- 2.5.6.10. Appeals from the decision of the Board are governed by SDCL ch. 1-26.

FORMS / APPENDICES:

None

SOURCE:

BOR August 2007; BOR April 2009; BOR December 2018; [June 2021](#)