

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

**REVISED
AGENDA ITEM: 6 – C
DATE: October 6-7, 2021**

SUBJECT

Opportunity for All

CONTROLLING STATUTE, RULE, OR POLICY

- [SDCL 20-13-10](#) – Unfair or discriminatory practices
- [SDCL 13-49-14](#) – Employment of officers, instructors and employees – Disparate treatment on certain grounds prohibited
- [SDCL 13-57-4](#) – Sectarian religion and partisan politics prohibited by university
- [Title VII of the Civil Rights Act of 1964](#)
- [U.S. Constitution Amendment I](#)
- [SD Constitution Art. VI § 5](#) – Freedom of speech
- [SDCL 3-6C-19](#) – Freedom of Speech of Officers and Employees
- [BOR Policy 1:32](#) – Commitment to Freedom of Expression
- [BOR Policy 1:11](#) – Academic Freedom and Responsibility
- [BOR Policy 3:9](#) – Guest Speakers
- [BOR Policy 3:18](#) – Recognition and Funding of Student Organizations

BACKGROUND / DISCUSSION

At the Board’s [August meeting](#), it approved a statement and action plan which directed Board staff and presidents to take certain actions and report back to the Board at its October meeting. Each institution will verbally report its activity, planning and/or progress towards implementing the Board’s August directive.

At the system level, the proposed revisions to BOR Policy 1:11 (Attachment I) are intended to provide additional clarity around the appropriate use of controversial topics in the classroom, consistent with the Board’s August Statement. The current policy does not squarely address the use and discussion of controversial topics in the classroom, and with that void comes uncertainty. The proposed revisions provide clear guidance on the topic, with their basis in well-established and legally sound literature on the topic, consistent with the tenets of academic freedom published by the American Association of University Professors over the last century.

(Continued)

DRAFT MOTION 20211006_6-C:

I move to approve the first reading of the proposed revisions to BOR Policies 1:11, 3:9 and 3:18, as presented.

Board policy currently lacks any substantive guidance on institutional sponsored campus speakers, with the current BOR Policy 3:9 saying very little, and is located in an odd section of the manual given its stated application to not only student groups, but also colleges and departments. The proposed revisions set forth in Attachment II serve to delineate between the processes for student organizations and those of colleges or departments, while also establishing considerations for the latter to help promote and encourage robust discussion and differing viewpoints or perspectives on campus. The foregoing isn't overly prescriptive, nor does it limit institutions from supplementing the list of considerations, but it does ensure some commonality across the institutions in how they approach and consider bringing institutionally sponsored guest speakers to campus. Additionally, this policy would be moved out of Section 3 of the Policy Manual and placed in Section 1 (Governance), which is more appropriate given its broad application.

Finally, the proposed changes to BOR Policy 3:18 (Attachment III) provide additional clarity around recognized student organizations. The policy is currently void of any reference to campus advisors, which are commonplace for recognized student organizations across the system. The proposed changes address institutional advisors for recognized student organizations, and include the appropriate role of such advisors, specifically noting that they are not to direct or control the expressive activity of recognized student organizations. Additionally, the proposed section 1.2 is intended to further clarify the separation between the recognized student organizations and the institution, making it clear that recognized student organizations are autonomous and that their actions/speech is not directed by, and should not be attributed to, the institution. Lastly, there are a few edits in section 3.3 to further clarify the viewpoint neutral and non-discriminatory nature of funding considerations and the need to establish and publish such standards or criteria at the campus level.

IMPACT AND RECOMMENDATION

The proposed revisions to BOR Policies 1:11, 3:9 and 3:18 provide additional guidance and/or clarity in the areas identified above.

Staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 1:11

Attachment II – Proposed Revisions to BOR Policy 3:9

Attachment III – Proposed Revisions to BOR Policy 3:18

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Academic Freedom and Responsibility

NUMBER: 1:11

1. The importance of academic freedom in teaching and learning and research and publication is well recognized and accepted. All employees whose duties include teaching, scholarly or creative work, or research are guaranteed the right of aAcademic freedom in such pursuits, ~~is guaranteed to faculty members~~ subject only to accepted standards of professional responsibility, including, but not limited to, those herein set forth:
 - A. Academic freedom is the freedom to inquire, discover, access, study, discuss, publish, investigate, research, disseminate, and teach, subject to the control and authority of the rational methods by which knowledge is established and accepted in the field. The importance of academic freedom to teaching and learning is recognized and accepted. Academic freedom includes the right to study, discuss, investigate, teach and publish. Academic freedom applies to both teaching and research.Freedom in teaching and learning and research and publication is fundamental to the advancement of truth and the creation of knowledge.
 - ~~A.B.~~ -Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher-instructor in teaching and of students to-in freedom in learning. It includes the freedom to perform one's professional duties and to present differing and sometimes controversial points of view, free from reprisal. Faculty members are entitled to freedom in the classroom in the discussion of their subject and in the presentation of various scholarly views, including controversial matter, which is relevant to a given course and course objectives. While controversy is at the heart of free academic inquiry, faculty should avoid persistently including material that does not relate to a given course or course objectives, or that otherwise detracts from the underlying course objectives. In the many instances where there are differing and even controversial scholarly views, divergent viewpoints and materials should be presented, studied, analyzed and debated to challenge and support students in developing their ability to think critically, form opinions and draw conclusions. They have the freedom to include the presentation of various scholarly views.
 - C. The concept of academic freedom ~~should be~~is accompanied by an equally demanding concept of responsibility. ~~The f~~Faculty members are members of a learned profession. When they speak or write as private citizens on matters of public concern, they must be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As learned people and as educators, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate,

~~should exercise appropriate restraint, should~~ show respect for the opinions of others and ~~should make every effort to~~ indicate ~~that when~~ they are not speaking for the institution.

2. To secure student freedom in learning, faculty members in the classroom and in seminar should encourage free and orderly discussion, inquiry and expression of the course subject matter. Student performance ~~may shall~~ be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.
 - A. Students ~~should must~~ be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.
 - B. ~~Each institution shall establish an academic appeals procedure to permit review of student a~~Student appeals alleging an ~~legations that an~~ academic evaluation was tainted by prejudiced or capricious consideration of student opinions or conduct unrelated to academic standards shall be addressed under Board Policy 2:9. Additionally, each institution shall establish a method by which students can submit complaints regarding allegations of any instruction conducted in a manner which is inconsistent with this policy. These procedures shall prohibit retaliation against persons who initiate appeals or complaints, or who participate in the review of appeals or complaints.
 - C. Students are responsible for maintaining standards of academic performance established for each course in which they are enrolled.

SOURCE: BOR, Aug. 1979; BOR, December 2005.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Guest Speakers

NUMBER: ~~3:9-1:XX~~

A. PURPOSE

To establish policy regarding the sponsoring of guest speakers on campus.

B. DEFINITIONS

None

C. POLICY

1. Guest Speakers on Campus

- 1.1. Recognized student organizations and colleges or departments of the institution may invite ~~and hear persons of their own choice~~ or sponsor guest speakers on campus, in accordance with applicable Board and Institutional policies. Routine procedures required by the institution before a guest speaker is invited to appear or an event is scheduled on campus shall, without limitation, be designed to ensure that there is orderly scheduling of facilities, adequate preparation for the event, and assurance that the event shall not substantially disrupt the educational process.
- 1.2. Recognized student organization requests for funding for guest speakers from the general activity fee levied pursuant to Board Policy No. 5:5:4(1)(B) shall be addressed and considered by the institution pursuant to the institutional process established in accordance with BOR Policy 3:18.
- 1.3. Requests for institutional funds, including funds allocated to departments or colleges of the institution, to sponsor guest speakers should be evaluated based on, but not limited to, the extent to which the proposed guest speaker:
 - 1.3.1. Adds to the diversity of intellectual viewpoints present on campus and encourages robust discussion;
 - 1.3.2. Allows for questions, discussion and interaction with attendees;
 - 1.3.3. Provides for a panel of diverse viewpoints on the topic;
 - 1.3.4. Adds to or otherwise compliments inter-department study, collaboration and dialogue;
 - 1.3.5. Enhances or compliments the research, creative scholarship or

curricular offerings of the institution; or
1.3.6. Is co-sponsored by another regental institution, state agency or local
government.

SOURCE: (RR, 12:02:1, 1977); BOR, March, 1993

SOUTH DAKOTA BOARD OF REGENTS**Policy Manual****SUBJECT:** Recognition and Funding of Student Organizations**NUMBER:** 3:18

A. PURPOSE

To establish policy regarding the recognition of student organizations on campus and the provision of funding thereto.

B. DEFINITIONS

None

C. POLICY**1. Recognition of Student Organizations**

1.1. Each institution will develop and publish criteria for recognition of student organizations. These recognition criteria will require student organizations to operate under a formal set of articles that define the powers of the organization and describe how those powers may be exercised, just as articles of incorporation or constitutions define the powers of commercial, nonprofit or governmental entities and describe how these powers may be exercised. Each institution will establish rules for budgeting, custody, expenditure and audit of organization funds, and the recognition criteria will require that recognized student organizations abide by such rules. No such rules or criteria may discriminate against any student or student organization based on the content or viewpoint of their expressive activity.

Such criteria will require student organizations to operate in a nondiscriminatory manner as provided in Board Policy No. 1:18. In compliance with Board Policy No. 1:18(5) institutions will recognize two limited exceptions to the general requirement that organizations not restrict membership or participation on the basis of race, color, creed, religion, national origin, ancestry, citizenship, gender, transgender, sexual orientation, age, disability, genetic information, military service membership or veteran's status. Consistently with rights guaranteed under state and federal constitutions, Board Policy No. 1:18(5) accommodates the distinctive characteristics of intimate associations or expressive associations. In keeping with these guarantees, an institution may not prohibit an ideological, political or religious student organization from requiring its leaders or members of the organization affirm and adhere to the organization's sincerely held beliefs, comply with the organization's standards of conduct, or further the organization's mission or purpose, as defined by the organization.

- 1.1.1. Intimate associations involve distinctively personal aspects of life. Factors that suggest that an organization should be treated as intimate association include: (a) the relative smallness of the organization; (b) a high degree of selectivity in choosing and maintaining members of the organization; (c) the personal nature of the organization's purpose; and (d) the exclusion of nonmembers from the central activities of the organization.
 - 1.1.1.1. A student organization that operates a residential facility for its membership would illustrate the kind of organization that might be classified as an intimate association, at least insofar as relates to limiting membership on the basis of gender.
- 1.1.2. Expressive associations are created for specific expressive purposes, and they would be significantly inhibited in advocating their desired viewpoints if they could not restrict their membership based on race, color, creed, religion, national origin, ancestry, citizenship, gender, transgender, sexual orientation, age, disability, genetic information or military service membership or veteran's status.
 - 1.1.2.1. A student organization dedicated to the practice of a particular religious faith would illustrate the kind of organization that might be classified as an expressive association, at least insofar as relates to limiting membership on the basis of adherence to the tenants of that faith.
- 1.1.3. Exceptions from the nondiscrimination policy will be made only to the extent necessary to accommodate the particular circumstance that warrants an exception; the overarching purpose of supporting student organization activities is to prepare students to act as citizens and leaders of a republican form of government, which by its nature permits discrimination against none.
 - 1.1.3.1. By way of illustration, but not limitation, a student organization operating a residential facility for its membership may be allowed to limit membership on the basis of gender, but not on the basis of religion; a student organization dedicated to the practice of a particular religious faith may be allowed to limit membership on the basis of religion, but, absent any contrary doctrine of faith, not on the basis of gender.
- 1.1.4. Each institution will establish a process that student groups may follow to secure recognition as student organizations. The chief executive officer of the institution will designate an administrator who will be responsible for determining whether a group of students satisfies the criteria for recognition as a student organization. Institutions with student government organizations may request that such organizations review applications for recognition as student organizations and make recommendations to the designated administrator whether a particular group of students satisfies the institutional criteria for recognition.
- 1.2. Recognized student organizations are to exist independent of, and outside of the direct control of the institution. Registered student organizations are not agents of the institution and are not to be endorsed or directed by the institution. Recognition of, or the provision of funding to, student organization consistent with this policy should not be construed to conflict with or alter the foregoing. Registered student

organizations are entirely responsible for the actions, activities and liabilities incurred in the name of the registered student organization and its members acting in their capacity as members of the registered student organization.

2. Funding of **Recognized** Student Organizations

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

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

Funding allocated to student organizations shall be distributed in a nondiscriminatory manner in accordance with applicable state and federal authority, and consistent with the institution's interests as outlined herein; provided that

2.1. No student organization will be eligible for fee subsidies:

- 2.1.1. If the funding is prohibited by Article 6, § 3 of the SD Constitution because it will be used for sectarian ceremonies or exercises;
- 2.1.2. If the funding is prohibited by SDCL § 12-27-20 because it will be used for the promotion or opposition of particular candidates for public office or ballot issues in elections, or financing off-campus lobbying or political activities of non-students;
- 2.1.3. If the organization operates a residential facility for its membership or otherwise generates income from commercial activities for the personal use and benefit of members or on behalf of for-profit entities; or
- 2.1.4. If the organization generates income for the personal use and benefit of the sponsoring organization members or on behalf of for-profit entities.

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

3. Procedures for Requesting Funding and Allocating Funds

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

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

3.3. Each institution will develop and publish viewpoint neutral standards and/or criteria used to guide the review of funding requests submitted by recognized student organizations. Subject to the limitations stated herein, these standards will require that

decisions be made on grounds unrelated to the exercise by students through the organization of their rights to free expression, to the free exercise of religion, to the freedom of association or to the freedom to petition government. Such rights-neutral mechanisms shall be created and administered in a consistent and non-discriminatory fashion, and may include, without limitation, random selection from among student proposals or prioritization based upon frequency of funding or other objective factors unrelated to the exercise of protected rights.

4. Advisors for Recognized Student Organizations

4.1. Each recognized student organization shall have a faculty or staff advisor from the institution. The role of the advisor is to provide guidance to the recognized student organization on the applicable rules, policies and processes of the institution.

4.2. Each institution shall develop standards to guide advisors in the fulfillment of their duties, which shall include, without limitation, establishing and enforcing the necessary parameters to prohibit advisors from directing or controlling the expressive activity of recognized student organizations.

FORMS / APPENDICES:

None

SOURCE:

BOR October 1994; BOR October 1996; BOR December 2000; BOR April 2013; BOR December 2018; BOR August 2019.