

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 6 – B (1)
DATE: December 7-8, 2022

SUBJECT

BOR Policy 4:27 – Drug-Free Environment (Second Reading)

CONTROLLING STATUTE, RULE, OR POLICY

BOR Policy 4:27 – Drug-Free Environment

BACKGROUND / DISCUSSION

In compliance with BOR Policy 4:27, Dr. Janice Minder and Katie Hubbart have been working with General Counsel Nathan Lukkes and Vice President of Human Resources Kayla Bastian to update the current attached policy. The policy in general context has not been modified. The changes reflect current practice and attempts to bring this policy into the current template.

The following has been updated:

- 1. Formatting
- 2. Insertion of a Purpose and Definitions
- 3. Repeal of Regents Reporting
- 4. Refer to Campus Reporting

IMPACT AND RECOMMENDATION

This policy draft was provided to the Academic Affairs Council at their August retreat; the first review of this policy with the Regents was at the October BOR meeting. No changes have been made since the October 2022 BOR Meeting.

Academic Affairs and Board staff support the policy revisions as recommended.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 4:27

DRAFT MOTION 20221207_6-B(1):

I move to approve the second and final reading of the proposed revisions to BOR Policy 4:27 – Drug-Free Environment, as presented.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Drug-Free Environment

NUMBER: 4:27

A. PURPOSE

The Board of Regents is committed to providing a healthy learning and working environments for all students and employees and strives to meet this commitment through prevention and awareness programs. Alcohol abuse and illegal drug use endangers the health and safety of all students and employees.

B. DEFINITIONS

None

C. DRUG-FREE 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.

D. 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 be submitted no later than five (5) days after such conviction.

1. 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.
2. 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.
3. 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.
4. 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) if 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.

E. 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.

1. Persons who violate the provisions of this policy will be disciplined.
 - 1.1. 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.
 - 1.2. 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, 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.
 - 1.3. 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 4.4, and ARSD 55:10:07:01; except that absent extraordinary circumstances, a second infraction will be deemed just cause for termination.
 - 1.4. 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.
2. 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.

3. 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:
 - 3.1. 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;
 - 3.2. Legal sanctions under local, state, or federal law for the unlawful possession or distribution of illicit drugs and alcohol;
 - 3.3. Health risks associated with the use of alcohol, marijuana, or controlled substances; and
 - 3.4. Any available programs for alcohol, marijuana, or controlled substances counseling, treatment, rehabilitation, or re-entry.
 - 3.5. The special schools shall also:
 - 3.5.1. Maintain age-appropriate, developmentally based drug and alcohol education and prevention programs for students in all grades;
 - 3.5.2. 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;
 - 3.5.3. Provide students with a copy of the standards of conduct required under subsection C.1 above; and
 - 3.5.4. Notify parents and students that compliance with the standards of conduct required under subsection C.1 above is mandatory.
4. ~~At the June 1992 meeting of the Board, and biennially thereafter, each institution will report~~
Each of the six universities and two special schools will submit their federally required reports to the Board of Regents designated representative biennially.
 - 4.1. ~~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;~~
 - 4.2. ~~Any changes in institutional or Regental policies that might enhance program effectiveness; and~~
 - 4.3. ~~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.~~

5. 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:
 - 5.1. 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.
 - 5.2. 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.
 - 5.3. 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.
 - 5.4. ~~Attractive~~ Nonalcoholic beverages must be equally available and on display.
 - 5.5. The consumption of alcoholic beverages must be limited to the area designated for the event.
 - 5.6. 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.
 - 5.6.1. 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.
 - 5.7. Alcohol service must be discontinued well before the event is expected to end.
 - 5.8. Alcohol use should never be the primary focus of the event. Drinking contests and other activities that encourage consumption of alcohol are strictly prohibited.
 - 5.9. 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.
 - 5.10. 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.
 - 5.11. Officially recognized organizations must agree to abide by the foregoing guidelines as a condition of continued recognition.

FORMS / APPENDICES:

None

SOURCE:

BOR Policy Manual 8.1.12; 15.1.1; 15.1.2; BOR August 2011; BOR August 2016; BOR June 2021;
[BOR December 2022](#).