

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**

**AGENDA ITEM: 7 – M**

**DATE: April 3-4, 2024**

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**SUBJECT**

**Revisions to BOR Policies 1.6.4 (Minors on Campus); 3.8.1 (Recognition and Funding of Student Organizations); 6.13 (Facilities Use by Private Parties); and 6.13.1 (Use of Institutional Facilities and Grounds for Expressive Activity by Student Organizations, Students, Employees, and their Guests) (First Reading)**

**CONTROLLING STATUTE, RULE, OR POLICY**

[BOR Policy 1.6.4](#) – Minors on Campus

[BOR Policy 3.8.1](#) – Recognition and Funding of Student Organizations

[BOR Policy 6.13](#) – Facilities Use by Private Parties

[BOR Policy 6.13.1](#) – Use of Institutional Facilities and Grounds for Expressive Activity by Student Organizations, Students, Employees, and their Guests

[HB 1178, SD Leg 2024](#)

**BACKGROUND / DISCUSSION**

In recent legislative sessions, there have been multiple bills attempting to regulate performances that may occur or be supported on college campuses. This conversation culminated during the 2024 legislative session with the introduction and passage of HB 1178. The law, which becomes effective July 1, 2024, reads:

“That a NEW SECTION be added to chapter 13-53:

The Board of Regents and any institution under its control may not:

- (1) Authorize the use of any state-owned facility or property to develop, implement, facilitate, host, or promote any obscene live conduct; or
- (2) Expend any public moneys in support of obscene live conduct.

For purposes of this section, the term "obscene live conduct" has the meaning given in § 22-24-27.”

(Continued)

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**DRAFT MOTION 20240403\_7-M:**

I move to approve the first reading of the proposed revisions to BOR Policies 1.6.4 (Minors on Campus); 3.8.1 (Recognition and Funding of Student Organizations); 6.13 (Facilities Use by Private Parties); and 6.13.1 (Use of Institutional Facilities and Grounds for Expressive Activity by Student Organizations, Students, Employees, and their Guests), as presented.

Board staff is not aware of any existing issues or occurrences in which obscene live conduct has taken place on institutional premises, and therefore there are no existing operations that require significant overhaul. However, HB 1178 provides the opportunity to clarify that such conduct is prohibited on campus for all individuals—students, employees, guests, and third parties.

As noted in committee testimony by the bill’s legislative sponsors, HB 1178 does not have the intent or purpose to prohibit drag shows from occurring on BOR property. Rather, the purpose is to act in concert with existing Board policies, such as the Minors on Campus policy, to ensure that obscene live conduct, which is not protected under the First Amendment, does not occur on campuses controlled by the Board of Regents.

### **IMPACT AND RECOMMENDATIONS**

As noted above, these policy revisions will not change existing day-to-day operations within the system or on campuses. Rather, they will work in tandem with HB 1178 to clarify requirements and ensure public notification that obscene live conduct may not occur in BOR facilities or with public resources. Accordingly, Board policies on facilities use, funding of student organizations, and minors on campus have been revised to reflect this prohibition.

This is the first of two readings of the proposed revisions. Board staff recommends approval.

### **ATTACHMENTS**

Attachment I – BOR Policy 1.6.4 (Minors on Campus)

Attachment II – BOR Policy 3.8.1 (Recognition and Funding of Student Organizations)

Attachment III – BOR Policy 6.13 (Facilities Use by Private Parties)

Attachment IV – BOR Policy 6.13.1 (Use of Institutional Facilities and Grounds for Expressive Activity by Student Organizations, Students, Employees, and their Guests)

## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** Minors on Campus

**NUMBER:** 1.6.4

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#### **A. PURPOSE**

To take affirmative steps to safeguard and protect the well-being of minors visiting campus, attending university-sponsored events and programs, or participating in external organization programs and activities that utilize campus facilities.

#### **B. DEFINITIONS**

1. **Authorized Adult:** An individual age eighteen (18) and older, paid or unpaid, who interacts directly with, supervises, chaperones, or otherwise oversees Non-Student Minors participating in a Program.
2. **External Organization:** Any individual or group not acting on behalf of the institution, or any individual or group acting independently of the institution, which includes recognized student organizations.
3. **Externally Sponsored:** Under the direct control of an External Organization.
4. **Minor:** An individual under the age of eighteen (18).
5. **Non-Student Minor:** A Minor who is not enrolled or accepted for enrollment at the university. The term includes students who are dually enrolled in university programs while also enrolled in secondary school.
6. **One-On-One Contact:** Personal, unsupervised interaction between an Authorized Adult and a Non-Student Minor without at least one other Authorized Adult, parent, or legal guardian being present.
7. **Program:** Any non-credit activity, event, or program that is University Sponsored, regardless of its location, or any activity, event, or program that is Externally Sponsored and uses University Facilities, but shall exclude the following exempt Programs:
  - 7.1. Research protocols involving Minors as human subjects, which are subject to the requirements specified by the relevant Institutional Review Board;
  - 7.2. University Sponsored or Externally Sponsored athletic competitions which are open to the general public in full group or assembly format;
  - 7.3. Recreational, exercise, or wellness programs or activities conducted in a facility open to membership or use by non-university affiliated persons by means of written agreement with an External Organization; and

- 7.4. Lawful private events or other lawful private usage of University Facilities by an External Organization in accordance with applicable university policy and through a written agreement with the university, which are not open to, whether by paid admission or otherwise, the general public, student body, or campus community. This exemption does not include Youth Programs, or otherwise exempt lawful private events or other lawful private usage of University Facilities from compliance with the provisions of Section C.2 below.
- 8. Program Leader:** The Authorized Adult designated by the program sponsor that is responsible for the operation and management of the Program.
- 9. University Facilities:** Buildings, structures, facilities, rooms, landscaping, and grounds owned or controlled by the university, but excluding municipal streets or sidewalks or public highways or rights of way that abut a campus.
- 10. University Sponsored:** Under the direct control of university employees acting within the scope of their employment.
- 11. Youth Program:** Any Program that is designed to serve or is targeted towards Non-Student Minors, at which parents or guardians are not expected to remain with, and be responsible for, their Non-Student Minor.

## C. POLICY

### 1. Non-Student Minors on Campus

- 1.1. Non-Student Minors are generally permitted in University Facilities only as invitees, participants, or visitors, and must be under the supervision of an Authorized Adult, parent or legal guardian, or other chaperone permitted to be in a University Facility by virtue of their status as a student, employee, or volunteer of the university. Non-Student Minors, and their supervising Authorized Adult, parent or legal guardian, or chaperone, who fail to comply with BOR and/or university policies while in University Facilities may be immediately removed from University Facilities.
- 1.2. All Non-Student Minors participating in Programs on campus are generally permitted supervised use of the University Facilities identified for the Program. The University reserves the right to restrict anyone, including Non-Student Minors, from certain areas or facilities or from using specified equipment.

### 2. Programs Open to Minors

#### 2.1. Prohibited Conduct

2.1.1. No Program involving the presence of Minors may include:

2.1.1.1. Specific sexual activities, as defined by SDCL § 11-12-1(15), or any material or other media containing specific sexual activities;

2.1.1.2. Obscene live conduct, as defined by SDCL § 22-24-27; ~~or~~

2.1.1.3. Any material, performance, description, or representation, in whatever form, meeting the definition of harmful to minors in SDCL §22-24-27(4); ~~or~~

2.1.1.3.2.1.1.4. Conduct otherwise prohibited in institutional facilities by SDBOR 6.13.1, Section B.6.

2.2. Content Descriptors

2.2.1. Content descriptors shall be used, as appropriate, for Programs which are open to Minors to provide parents or legal guardians with information about the content of the Program. Programs which may include nudity, sexual situations, violence, and/or other explicit content shall include the appropriate descriptor(s) (e.g., “may contain explicit content”) on any promotional material for the Program published, electronically or in print, on a university platform.

**3. Program Administration**

3.1. Authorized Adults participating in Programs involving the presence of Non-Student Minors may not:

- 3.1.1. Have One-On-One Contact with Non-Student Minors, unless the nature of the specific Program activity requires the same (e.g., private lessons, tutoring, interviews, etc.), in which case the One-On-One Contact must take place in a location that is observable and interruptible;
- 3.1.2. Have any direct electronic communication, including social media, with Non-Student Minors without an education or programmatic purpose for the communication and without another Authorized Adult, or the Non-Student Minors parent or guardian, being included in the communication;
- 3.1.3. Enter a Non-Student Minor’s private room, bathroom facility, changing area, shower area or similar private area occupied by a Non-Student Minor without another Authorized Adult in attendance;
- 3.1.4. Take pictures of Non-Student Minors except as part of official pictures of the Program and only when the parent or legal guardian has signed the appropriate waiver;
- 3.1.5. Haze, bully, or otherwise engage in abusive conduct of any kind toward, or in the presence of, a Non-Student Minor;
- 3.1.6. Use alcohol or illegal drugs while supervising, or in the presence of, a Non-Student Minor;
- 3.1.7. Strike, hit, administer corporal punishment to, or touch in an inappropriate or illegal manner, or manner that a person could reasonably interpret as inappropriate, any Non-Student Minor or allow the same between Non-Student Minors; or
- 3.1.8. Use or allow any obscene or sexually suggestive comments or sexual innuendo to, or in the presence of, a Non-Student Minor.

3.2. All Programs, Authorized Adults, and any other individual(s) participating in a Program, must comply with the provisions of this policy, any applicable BOR or

university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations.

### 3.3. Program Leader

3.3.1. A Program Leader must be appointed for each Youth Program.

3.3.2. The Program Leader is responsible for:

- 3.3.2.1. Training all employees and volunteers in, and adhering to, this policy and any other applicable policies, procedures, laws, or regulations applicable to the Youth Program;
- 3.3.2.2. Certifying background checks have been conducted on Authorized Adults in accordance with this policy;
- 3.3.2.3. Establishing a procedure for notification of parents or legal guardians of all participants in the event of an emergency;
- 3.3.2.4. Completing and retaining all required forms; and
- 3.3.2.5. Establishing a plan for maintaining adequate supervision considering the number and age of Non-Student Minors participating in the Youth Program.

### 3.4. Supervision

3.4.1. Youth Programs must be supervised by two (2) or more Authorized Adults at all times.

3.4.2. Separate sleeping rooms are required for Authorized Adults and Non-Student Minors participating in Programs involving overnight stays, unless the Authorized Adult is a parent, guardian, or sibling of the Non-Student Minor. Signed written permission from a parent or guardian is required for a Non-Student Minor to stay overnight while participating in a Program.

### 3.5. Background Checks

3.5.1. For University Sponsored Youth Programs, background checks shall be conducted for all Authorized Adults participating in Youth Programs involving Non-Student Minors in accordance with applicable university policy.

3.5.2. For Youth Programs sponsored by External Organizations, all Authorized Adults affiliated with the Youth Program must have been subject to, and pass, a criminal background check and a sex offender registry check within the previous twelve months, unless the Authorized Adult is a university employee and has undergone a background check in accordance with 3.5.1 above. At a minimum, the criminal background check and sex offender registry check must consist of a search conducted by a qualified background check service provider, and include a review of criminal court records of all counties of residence based on the Authorized Adult's past seven (7) years of residential addresses. After the background check process and at any time during the

Youth Program, Authorized Adults are required to notify the Program Leader of an arrest or conviction as soon as reasonably possible if the arrest or conviction could result in the Authorized Adult's disqualification from participation as such in the Youth Program. Pending charges will be reviewed in conformity with the standards contained in the university's background check policies and applicable law.

- 3.5.3. Authorized Adults shall cooperate with any request for a background check made pursuant to this policy.
- 3.5.4. No Authorized Adult may be listed on any sex offender registry. The following types of convictions will normally render an individual ineligible to work or volunteer at a Program:
  - 3.5.4.1. Drug distribution or felony drug possession;
  - 3.5.4.2. Sexual offenses;
  - 3.5.4.3. Domestic violence;
  - 3.5.4.4. Stalking
  - 3.5.4.5. Crimes of violence involving physical injury to another person;
  - 3.5.4.6. Child abuse, molestation, child pornography or other crimes involving child endangerment, including neglect and abandonment;
  - 3.5.4.7. Murder;
  - 3.5.4.8. Kidnapping; or
  - 3.5.4.9. Any other crime involving moral turpitude, as defined in SDCL § 22-1-2(25).
- 3.5.5. The following Authorized Adults are exempt from the background check requirements under this policy:
  - 3.5.5.1. Authorized Adults who engage with Non-Student Minors at Youth Programs where the Non-Student Minors are under the direct supervision, care and control of teachers, parents or other adult chaperones from the Non-Student Minor's school or organization; and
  - 3.5.5.2. Guest presenters or participants in Youth Programs if Non-Student Minors remain under the direct supervision of Authorized Adults who have successfully completed a background check pursuant to this policy.

#### **4. Duty to Report Inappropriate Conduct**

- 4.1. Anyone who is not subject to a recognized legal privilege who witnesses or suspects that there may be inappropriate conduct towards or touching of Minors must immediately contact the university's designated law enforcement unit. Further, all participation in the Program by a person accused or suspected of inappropriate

conduct with a Minor must immediately cease until the allegations have been satisfactorily resolved by the university's designated law enforcement unit.

## **5. External Organization Contracts**

- 5.1. External Organizations that operate Programs involving Non-Student Minors must be aware of, and comply with, this policy. The specific requirements of this policy must be incorporated into any contract or subcontract with External Organizations for Programs that involve Non-Student Minors.

## **6. Sanctions**

- 6.1. Failure to comply with the provisions of this policy, any applicable BOR or university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations may result in suspension, discontinuance and/or cancellation of the Program and/or discipline in accordance with BOR and/or university policies.

## **7. Exceptions**

- 7.1. Only in rare and unusual circumstances may an exception to this policy be granted. Individuals may submit a written request for exception to the university president, or their designee, who will determine whether an exception to the policy will be granted. Any approved exception to this policy must be in writing, to include the nature of the exception and the rationale for its approval.

## **FORMS / APPENDICES:**

None

## **SOURCE:**

BOR May 2023; October 2023 (Clerical); [BOR June 2024](#).



**SOUTH DAKOTA BOARD OF REGENTS****Policy Manual****SUBJECT:** Recognition and Funding of Student Organizations**NUMBER:** 3.8.1

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**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. Recognized 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. Recognized student

organizations are entirely responsible for the actions, activities and liabilities incurred in the name of the recognized student organization and its members acting in their capacity as members of the recognized student organization. The provisions of this section should not be construed or applied to adversely impact or diminish the role of recognized student organizations on campus, but rather to ensure recognized student organizations enjoy the necessary autonomy to protect their right to engage in expressive activity to fullest extent permitted by law, while also maintaining the applicable accountability and responsibility associated with their status.

## 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; ~~or~~

~~2.1.4.~~2.1.5. If the funding is to be used to support obscene live conduct as defined by SDCL § 22-24-27.

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; BOR December 2021; October 2023 (Clerical); [BOR June 2024](#).

## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** Facilities Use by Private Parties

**NUMBER:** 6.13

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#### **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.
- 2.4.12. 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.
- ~~2.4.12.~~2.4.13. Private parties may not develop, implement, facilitate, host, or promote any obscene live conduct, as defined by SDCL § 22-24-27, on institutional property. Institutions retain the authority to cancel or discontinue an event with immediate effect if the institution becomes aware that a private party has developed, implemented, facilitated, or hosted obscene live conduct during the event. Failure to comply with the provisions of this policy, any applicable BOR or university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations may result in suspension, discontinuance and/or cancellation of the event. Private parties found to have violated this provision may have additional scheduled events cancelled or applications for future events denied pursuant to §2.5.5, below.
- 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 (3<sup>rd</sup>) 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; BOR June 2021, October 2023 (Clerical); [BOR June 2024](#).

## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** Use of Institutional Facilities and Grounds for Expressive Activity by Student Organizations, Students, Employees, and their Guests

**NUMBER:** 6.13.1

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#### **A. PURPOSE**

To promote and facilitate free expression while allowing the institution to ensure such activities do not interfere with the institution's mission and operations or with the rights of others.

#### **B. DEFINITIONS**

1. **Coercion:** The inducement of another to perform some act under circumstances which deprives them of their exercise of free will, such as force, threats, attempts to intimidate or badger a person into viewing, listening to, or accepting a copy of communication; or persistently requesting or demanding the attention of a person after that person has attempted to walk away or has clearly refused to attend to the speaker's communication.
2. **Demonstration:** Any process of showing an individual or group cause by speech, example, group action or other form of public explanation.
3. **Debate:** A discussion involving different viewpoints in which different sides of an issue are advocated or presented by differing speakers.
4. **Expressive activity:** Any lawful noncommercial verbal or written means by which one person communicates ideas to another, and includes peaceful assembly, protests, debate, demonstrations, speeches, distribution of literature, the carrying of signs, and the circulation of petitions.
5. **Guest:** Any person who enters campus for a purpose connected with the expressive activity of an institution's student organization, student, or employee acting in their non-institutional capacity, by express or implicit invitation of the student organization, student, or employee.
6. **Prohibited Conduct:** Any conduct violating state or federal law, regulation, or policy, including but not limited to coercion, [obscene live conduct as defined by SDCL § 22-24-27](#), speech unprotected by the United States or South Dakota Constitution, unlawful conduct under state or federal law, rule, or policy, including but not limited to Board or institutional policies.
7. **Institution:** Means Black Hills State University, Black Hills State University – Rapid City, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, University Center – Sioux Falls, and University of South Dakota.

- 8. Large-scale events:** Defined as (i) events that are expected to attract 50 or more people or (ii) events that request the use of amplified sound. Such events include invited speakers, marches, parades, protests, and demonstrations.

## **C. POLICY**

### **1. Policy Statement**

The South Dakota Board of Regents recognizes and supports the educational institutions as marketplaces of ideas. The primary function of the institutions is to discover and disseminate knowledge by means of research and teaching. The Board supports the right of student organizations, students, employees, and their guests to speak in public and to demonstrate for or against actions and opinions with which they agree or disagree. Freedom of expression is vital to the shared goal of the pursuit of knowledge. Such freedom comes with a responsibility to welcome and promote this freedom for all, even in disagreement or opposition. In doing so, however, students, employees, and their guests must comply with this and other Board policies, and institutional policies.

### **2. General Guidelines**

- 2.1. The Board and its institutions are committed to providing an educational, research, and service environment that is conducive to the development of each individual. As a public entity, the Board and its institutions provide both formal and informal forums for the expression of ideas and opinions as long as it is done within the context of federal and state law and Board and institutional policies, and does not impede pedestrian and/or vehicular traffic, disturb or interfere with normal academic, administrative or student activities, or involve prohibited conduct.
- 2.2. Because institutional facilities and grounds are tax-exempt public facilities and grounds, they are not generally available for use for commercial purposes, subject to the specific exception set forth in Board Policy 3:7 and 6:13.

### **3. Outdoor Areas**

- 3.1. To facilitate robust debate and the free exchange of ideas, the outdoor areas within the boundaries of the institution, unless otherwise properly restricted, constitute a designated public forum for the benefit of student organizations, students, employees, and their guests to engage in expressive activity. This use may be without prior permission from the institution so long as:
- 3.1.1. The area has not been previously reserved or scheduled for a particular function;
  - 3.1.2. No sound amplification is used;
  - 3.1.3. Participants do not violate any Board or institutional policy or engage in prohibited conduct; and
  - 3.1.4. The General Guidelines outlined in Section C.2 are followed.
- 3.2. Nothing in this section 3 shall be interpreted as limiting the right of a student's free expression elsewhere on campus, in keeping with the nature of the forum designated

by the institution in which the expressive activity occurs and the implementation of Board Policy 6:13, so long as the expressive activities or related conduct do not violate any other applicable Board or institutional policy or constitute prohibited conduct.

- 3.3. An institution may not designate any outdoor area within its boundaries as a free speech zone or otherwise restrict the expressive activities of students, employees and their guests to particular outdoor areas within its boundaries in a manner that is inconsistent with this policy.

#### **4. Institutional Obligations**

- 4.1. Each institution shall designate and publicize:
  - 4.1.1. The institutional office(s) for scheduling and coordinating large scale events;
  - 4.1.2. The contact information for the person or office to which appeals of this or related institutional policies are submitted, who shall not be the person or office that schedules and coordinates large scale events;
  - 4.1.3. A form, whether physical or electronic, for reserving facilities or grounds; and
  - 4.1.4. The grounds for granting or denying a reservation in keeping with Board Policy 6:13(C)(2.5).
- 4.2. An institution may maintain and enforce additional lawful reasonable time, place, and manner restrictions on the use of outdoor areas within the institutional boundaries, so long as any such restrictions are clear, narrowly tailored in the service of a significant institutional interest, published, content-neutral, viewpoint-neutral, and provide alternate means of engaging in the expressive activity. Any such restrictions shall allow students and employees to spontaneously and contemporaneously assemble in outdoor areas within the boundaries of the institution, unless otherwise properly restricted, as long as their conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

#### **5. Guidelines for Expressive Activity by Students and Student Organizations**

- 5.1. A student's right of freedom of expression at the institution includes organized demonstrations or events. At the same time, the institution has long recognized that this right does not include the right to engage in conduct that disrupts the institution's operations, infringes other students' freedom in learning, interferes with the academic freedom of faculty, endangers the safety of others, or constitutes prohibited conduct.
- 5.2. The institution shall require any student or student organization, planning a large-scale event to contact the designated institutional office in advance of the large scale event. A representative of the designated institutional office will work with the requesting person to either meet the request or find a reasonable alternate time and location.
- 5.3. The institution may require the requesting party to provide a parade route, hire security, ensure egress to facilities, or take other steps to maintain the safety of the

campus; however, any such requirement(s) must be based on definite and objective criteria that are not content-based. All participants must follow all Board and institutional policies and applicable law.

~~5.4.~~ Access to, and use of, facilities and grounds at institutions shall be equally available to all student organizations, regardless of the ideological, political, or religious beliefs of the organization.

## 6. Guidelines for Expressive Activity by Guests

6.1. Guests of student organizations, students, and employees may engage in expressive activity in outdoor areas in conformity with all applicable policies and in a manner that does not constitute prohibited conduct, or they may seek to reserve select campus facilities pursuant to Board Policy 6:13.

6.2. Hosts of guests who are planning a large-scale event must contact the designated institutional office in advance of the large scale event. A representative of the designated institutional office will work with the requesting person to either meet the request or find a reasonable alternate time and location.

6.3. By inviting the guest(s), the student organization, student, or employee, in their individual capacity, assumes responsibility for the compliance, safety, behavior, and violations of their guest(s).

## 7. Enforcement

7.1. Student organizations', students', and employees' guests found violating Board or institutional policies, including this policy, will be subject to immediate removal from the institutional grounds, without prior warning, by appropriate institutional agents or officials and may be subject to appropriate legal action.

~~7.1.~~7.2. Institutions retain the right to cancel or discontinue an event with immediate effect if the institution becomes aware that the event constitutes prohibited conduct. Failure to comply with the provisions of this policy, any applicable BOR or university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations may result in suspension, discontinuance and/or cancellation of the event.

~~7.2.~~7.3. Students and/or student organizations violating this policy will be subject to disciplinary action pursuant to the Student Code of Conduct.

~~7.3.~~7.4. Employees violating this policy will be subject to disciplinary action pursuant to applicable Board Policy.

## 8. Appeals

Individuals who believe that the institution violated this policy may obtain a review as follows:

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

8.2. The completed written appeal must be presented within five (5) working days after the violation occurred.

8.3. The appeal shall state specifically facts that, if proven, would demonstrate:

- 8.3.1. That the denial was based upon an incorrect assessment of material fact or
- 8.3.2. 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.

- 8.4. The designated institutional office will respond to such appeals via email within two (2) working days after their receipt by the institution. Should the institutional office deny the appeal, it shall provide in its response a copy of the reservation and the procedure for appealing the decision to the institutional chief executive officer.
- 8.5. If the individual remains dissatisfied, they may appeal to the institutional chief executive officer by filing a written appeal on the same approved form within five (5) working days after the institution issued its response.
  - 8.5.1. The institutional chief executive officer shall have five (5) 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 individual, determining whether denial was proper and, if the appeal is denied, informing the individual of the discretionary appeal to the Board of Regents.
- 8.6. After exhausting institutional appeals, the individual may appeal the determination of the institutional chief executive officer by submitting a written appeal to the Executive Director of the Board within ten (10) working days from the effective date of the institutional chief executive officer decision. Such an appeal shall include the completed reservation form, the denial, the appeals and decisions exchanged at the institutional level, and the required appeal form.
  - 8.6.1. The Executive Director of the Board 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 as a matter of law.
  - 8.6.2. If the Executive Director issues a preliminary recommendation that would deny the individual relief, the individual shall be allowed ten (10) working days from the transmission or deposit in the mail of the Executive Director's written response to provide reasons why that response should not become final.
  - 8.6.3. 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 individual within ten (10) working days from the date of appointment to schedule any necessary exchanges of authorities, hearings or evidentiary hearings.



- 8.6.3.1. 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.
- 8.6.4. 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.
- 8.7. Appeals from the decision of the Board are governed by SDCL ch 1-26.

**FORMS / APPENDICES:**

None

**SOURCE:**

BOR August 2019; October 2023 (Clerical); [BOR June 2024](#).