

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 6 – E

DATE: April 2-3, 2025

SUBJECT

Revised BOR Policy 3.4.1 and 1.4.2 (First and Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 3.4.1](#) – Student Code of Conduct

[BOR Policy 1.4.2](#) – Prevention of Dating Violence, Domestic Violence, Sexual Assault and Stalking

[Stop Campus Hazing Act \(H.R. 5646, 2023-2024\)](#)

BACKGROUND/DISCUSSION

Recent federal legislation in the form of the Stop Campus Hazing Act (SCHA) created updated requirements for institutes of higher education regarding incidents or reports of hazing at colleges or universities. New requirements include inclusion of hazing statistics in an institution’s annual security (Clery) report, implementation of hazing policies, and compilation of a campus hazing transparency report. This legislation became effective in December 2024. Requirements for colleges and universities began rolling out in January 2025. Colleges and universities must have policies in place by June 2025, per the federal legislation.

IMPACT AND RECOMMENDATIONS

In order to ensure SDBOR institutional compliance with the new requirements set forth by the SCHA, the proposed revisions update the definition of hazing in the applicable policies related to student conduct and campus safety and security reporting compliance, in alignment with the updated federal requirements and definitions. Campuses will then be able to implement the updated definitions into their local policies and reporting procedures. As this policy update is to align with federal legislation, a request for a first and final reading approval is recommended.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 3.4.1 (Student Code of Conduct)

Attachment II – Proposed Revisions to BOR Policy 1.4.2 (Prevention of Dating Violence, Domestic Violence, Sexual Assault, and Stalking)

DRAFT MOTION 20250403_6-E:

I move to (1) waive the two-reading requirement of By-Laws Section 5.5.1, and (2) approve the first and final reading of the proposed revisions to BOR Policy 3.4.1 (Student Code of Conduct) and BOR Policy 1.4.2 (Prevention of Dating Violence, Domestic Violence, Sexual Assault, and Stalking), as presented.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Student Code of Conduct

NUMBER: 3.4.1

A. PURPOSE

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

B. DEFINITIONS

1. **Advisor:** A person of the student's choosing who has agreed to advise a student throughout the student conduct process. The advisor may be a faculty member, staff member, student, attorney, family member, or anyone else. The advisor is limited to advising the student directly, and is not permitted to speak to anyone else, or participate directly, in any hearing. Students should choose an advisor who is available to attend any scheduled meetings or hearings because advisor availability is not considered in scheduling meetings or hearings.
2. **Appellate Board:** Any person or persons authorized by the institutional president to consider an appeal from the chair's determination that a respondent has or has not violated the Student Code or from the conduct sanctions imposed by the Student Conduct Officer.
3. **Board Policy:** The written policies of the South Dakota Board of Regents contained in the policy manual.
4. **Chair:** The Student Conduct Officer or the senior student affairs officer who:
 - 4.1. Is a member of the Student Conduct Panel;
 - 4.2. Is responsible for the proper operation of the hearing; and
 - 4.3. Has sole discretion to determine whether a Respondent has violated the Student Code, and if so, to impose appropriate sanctions.
5. **Complainant:** An individual who was allegedly injured by an alleged violation of the Student Code by a respondent.
6. **Day:** Monday through Friday, except for holidays and other times when the Institution's administrative offices are closed.
7. **Faculty Member:** Any person hired by the institution to conduct classroom or other academic activities.
8. **FERPA:** the Family Educational Rights and Privacy Act of 1974, as amended.

9. **Human Rights Violations:** Violence, Harassment, Stalking, Discrimination, and Retaliation under this Student Code not constituting Sexual Harassment as defined by section 2.4.6 below.
10. **Institution:** Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines and Technology, South Dakota State University, and University of South Dakota.
11. **Institutional Official:** Any person employed by the institution, performing assigned administrative or professional responsibilities.
12. **Institutional Premises:** All land, buildings, facilities, and other property in the possession of, or owned, used, or controlled by, the Institution, including adjacent streets and sidewalks.
13. **Member of the Institutional Community:** Any person who is a student, faculty member, institutional official, any person employed by the institution, a volunteer, or guest. A person's status in a particular situation shall be determined by the senior student affairs officer.
14. **Notice:** Notice required by this Student Code shall be provided in writing via email to the student's official institutional email account. Notice is deemed received the Day after it is sent by email.
15. **Organization:** Any student group that has been granted institutional registration or recognition.
16. **Policy:** The written regulations of the institution as found in, but not limited to, this Student Code, the Residence Life Handbook, the Graduate and Undergraduate Catalogs, and other official publications.
17. **Reasonable Person:** A reasonable person under similar circumstances and with similar identities as the complainant.
18. **Respondent:** A student or organization that is alleged to have violated the Student Code.
19. **Senior Student Affairs Officer:** That institutional official exercising primary authority over institutional student affairs programs and operations, or designee.
20. **Student:** All persons taking courses from the institution, both full-time and part-time, enrolled in undergraduate, graduate, professional or special topic courses, whether credit-bearing or not.
21. **Student Code:** The Student Code of Conduct contained in this Board Policy 3.4.1.
22. **Student Conduct Panel:** The panel that hears formal hearings.
 - 22.1. This panel can take the following forms:
 - 22.1.1. Option 1 – only the Student Conduct Officer;
 - 22.1.2. Option 2 – the Student Conduct Officer and any institutional employee or employees or independent contractor authorized by the senior student affairs officer to determine whether a student has violated the Student Code and to recommend imposition of conduct sanctions;

22.2. For matters involving allegations of academic misconduct, the student conduct panel must include at least one faculty member or academic administrator appointed by the Provost in the form described in Option 2 above.

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

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

OR

23.2. Serve as chair of the Student Conduct Panel;

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

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

C. POLICY

1. Introduction

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

1.1. Purpose of the Student Code of Conduct

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

1.2. Standards of Behavior

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

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

1.3. Authority of an Institution over its Students and Organizations

- 1.3.1. Student conduct proceedings may be initiated in response to conduct prohibited by the Student Code:
 - 1.3.1.1. That occurs on institutional premises
 - 1.3.1.2. That occurs at events official sponsored by an institution
 - 1.3.1.3. That arises out of membership in the Institutional community: or
 - 1.3.1.4. That occurs elsewhere and that adversely affects an Institution, any Organizations, members or the Institutional community, or the pursuit of their lawful objectives.
- 1.3.2. Notwithstanding this Student Code, an institution reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community. The institution also reserves the right to extend any deadline contained in this Student Code for good cause with written notice to the parties of the delay and the reason for the delay.
- 1.3.3. For purposes of the Student Code, the default authority over the student for student conduct purposes will be determined as follows:
 - 1.3.3.1. For alleged misconduct that occurs on institutional premises, the institution where the alleged misconduct occurred;
 - 1.3.3.2. For alleged misconduct that occurs at events officially sponsored by an institution, the institution that sponsored the event;
 - 1.3.3.3. For alleged misconduct that occurs elsewhere and that adversely affects an institution, the institution adversely affected;
 - 1.3.3.4. For alleged instances of Academic Misconduct, the institution that offered the course.
- 1.3.4. For instances where multiple Institutions have a reasonable claim to authority over the student for student conduct purposes, the Senior Student Affairs Officer at the institutions with a reasonable claim to authority shall determine the appropriate institution to proceed with the Student conduct process. The decision should consider the location of the alleged incident, complainant, respondent, witnesses, and the practicality of conducting the student conduct process at the different Institutions having a reasonable claim to authority. If the Senior Student Affairs Officers cannot agree, the System Director of Student Affairs will make a final decision.
- 1.3.5. Where students are also employees, they may be subject to concurrent authority. Student conduct proceedings under this Student Code may be initiated irrespective of any action taken by an institutional employer. However, when the student employee has been subject to conduct proceedings as an employee, the findings that resulted from such proceedings will be considered in the student conduct process as long as the standard used in such proceedings was preponderance of the evidence or higher.

1.4. Alcohol Amnesty

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

- 1.4.1. A student who seeks emergency medical attention (or who has emergency medical attention sought on his/her behalf) for alcohol-related consumption, will not be sanctioned for violating alcohol consumption prohibitions found in the Student Code related to that incident, as long as the student completes the following requirements:
 - Participates in an initial meeting with the Senior Student Affairs Officer; and
 - Completes all recommendations from the Senior Student Affairs Officer; and
 - Submits proof of completion of all recommendations, within the time frame designated by the Senior Student Affairs Officer at the initial meeting.
- 1.4.2. A bystander student who has engaged in alcohol consumption and who seeks emergency medical attention for someone else or tries to actively engage in assistance for someone else for that person's alcohol-related consumption, will not be sanctioned for violating alcohol consumption prohibitions found in the Student Code related to his/her own consumption but will be invited to meet with the Senior Student Affairs Officer.
- 1.4.3. The institution will not pursue any disciplinary action related to any alcohol or drug consumption against any student who has been sexually assaulted or sexually harassed, for his/her use of alcohol or drugs at the time of the sexual assault or sexual harassment.
- 1.4.4. Subsections C.1.4.1 and C.1.4.2 of this section will only apply to a student who seeks emergency medical attention before police or institutional employees or agents take any official action or intervention related to the alcohol consumption.
- 1.4.5. Alcohol amnesty does not preclude disciplinary action regarding other violations of the Student Code.
- 1.4.6. Alcohol amnesty only applies to the institution's student conduct process. It does not apply to any criminal, civil or other legal consequence for violations under federal, state or local law.
- 1.4.7. Alcohol amnesty is not designed to protect or shield those students who repeatedly violate the Student Code. The Senior Student Affairs Officer may assess each situation on a case-by-case basis, denying the safeguards of alcohol amnesty if serious or repeated incidents prompt a higher degree of concern or response, which may include disciplinary action under this Student Code.

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

- 1.5.1. The student conduct process is independent of any criminal or civil process. Therefore, a student alleged to have engaged in conduct that would be a violation of this Student Code (whether such conduct could also be a violation of criminal or civil law) may face student disciplinary action regardless of any criminal or civil process or their outcomes.
- 1.5.2. When the alleged misconduct includes allegations of Human Rights Violations, the disciplinary process will not be delayed except when law enforcement requests a delay to conduct the fact-finding portion of its investigation.
- 1.5.3. Determinations made or conduct sanctions imposed under this Student Code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of this Student Code were dismissed, reduced, or resolved in favor of, or against, the criminal law defendant.
- 1.5.4. When a student is charged by federal, state, or local authorities with a violation of law, the Institution will not request or agree to special consideration for that student because of his or her status as a student.
- 1.5.5. If the alleged violation of law also gives rise to student disciplinary action under this Student Code, the institution may advise off-campus authorities of the existence of the Student Code and of how such matters are typically handled under the Student Code.
- 1.5.6. The institution will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law and in the conditions imposed by criminal courts for the rehabilitation of Student violators provided that the conditions do not conflict with any conduct sanctions imposed as a result of the student conduct process, this Student Code, or Institutional Policies.
- 1.5.7. Where the student has been found guilty in a court of law or has declined to contest such charges, although not actually admitting guilt (e.g., “no contest” or “nolo contendere”), the alleged facts that formed the basis of the criminal charges shall be deemed established for purposes of any student conduct process.
- 1.5.8. Individual students and other members of the institutional community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.
- 1.5.9. When an employee of the institution knows that a felony was committed and that knowledge is not privileged, such employee shall report the known facts and circumstances to law enforcement officials who have jurisdiction over the matter.

1.6. Interpretation and Revision

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

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

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

2. Prohibited Conduct

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

2.1. Acts of Academic Misconduct or Dishonesty

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

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

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

- Using any unauthorized assistance in, or having unauthorized materials while, taking quizzes, tests, examinations or other assignments, including copying from another's quiz, test, examination, or other assignment or allowing another to copy from one's own quiz, test, examination, or other assignment;
- Using sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments;

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

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

- Using, by paraphrase or direct quotation, the published or unpublished work of another person without full and clear acknowledgment;
- Using materials prepared by another person or agency engaged in the selling of term papers or other academic materials without prior authorization by the instructor; or
- Engaging in other behavior that a reasonable person would consider plagiarism.

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

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

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

2.1.5. Tampering with the election of any organization.

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

2.2. Disruption, Obstruction, or Interference with Institutional Activities

2.2.1. Disrupting or obstructing institutional activities.

2.2.2. Classroom disruption, which is behavior that a reasonable person would view as significantly or repeatedly interfering with the instructor's ability to teach the class or the ability of other students to benefit from the instructional program.

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

- 2.2.4. Obstruction of the free flow of pedestrian or vehicular traffic.
- 2.2.5. Abuse of the student conduct process, which includes, but is not limited to, any of the following:
- Falsifying, distorting, or misrepresenting information provided;
 - Making false allegations;
 - Attempting to discourage an individual's proper participation in, or use of, the Student conduct process;
 - Harassment (verbal or physical) or intimidation of any person participating in the Student conduct process;
 - Failure to comply with any conduct sanctions imposed pursuant to this Student Code.
- 2.3. Misuse of Institutional Resources or Property, or Personal Property of Others
- 2.3.1. Tampering with fire and life safety equipment including, without limitation, fire alarms, sprinkler systems, first aid equipment, and laboratory safety apparatus.
- 2.3.2. Unauthorized taking of, damage to, or possession of property belonging to the Institution, another member of the institutional community, or another person.
- 2.3.3. Unauthorized possession, duplication, or use of keys, access cards, or access codes to any institutional premises.
- 2.3.4. Unauthorized entry into, or use of, institutional premises.
- 2.3.5. Unauthorized possession, entry into, or use of institutional equipment, software systems, or information.
- 2.3.6. Possession of firearms, stun guns, tasers, BB guns, switchblade knives, fixed-blade knives with a blade length of five (5) inches or greater, or any item that is designed or used to injure or harm another person, fireworks, explosives, or dangerous chemicals on institutional premises or at institutional events, except as explicitly permitted by a Board Policy or an Institutional Policy;
- 2.3.7. Unauthorized use or abuse of technology, including, but not limited to:
- Unauthorized entry into a file or program to use, copy, read, delete, or change the contents, or for any other purpose;
 - Unauthorized transfer of a file;
 - Unauthorized use of another individual's identification or account;
 - Use of technology to interfere with the work of another student, faculty member, or institutional official;
 - Use of an Institution's technology to engage in Harassment.
 - Use of technology to engage in unlawful activities, including those involving uses that infringe intellectual property rights;

- Use of technology to interfere with normal operation of an institution's technology or other system;
- Making, acquiring, or using unauthorized copies of computer files, violating terms of applicable software license agreements, or using the Institution's technology network or system to download files in violation of copyright laws;
- Attempting to circumvent data protection schemes or tampering with security;
- Violating institutional or board computer use or internet policies.

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

- 2.4.1. Violence, which includes, but is not limited to, using or threatening to use physical force on or towards another person without that person's permission, except in reasonable self-defense. The use of physical force includes both using one's own body parts as well as using other items.
- 2.4.2. Brandishing, pointing, or using a knife, gun, or other weapon towards another person, except in reasonable self-defense.
- 2.4.3. Restraining or transporting another person without that person's permission.
- 2.4.4. Making bomb threats.
- 2.4.5. Harassment, which includes, but is not limited to: Conduct towards another person that is so severe, pervasive, and objectively offensive that it effectively denies the individual's ability to participate in or to realize the intended benefits of an Institutional activity or resource; and
- 2.4.6. Sexual Harassment, which is conduct on the basis of sex that satisfies one or more of the following:
 - 2.4.6.1. An employee of an institutional conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
 - 2.4.6.2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
 - 2.4.6.3. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA), the definitions of which are set forth in BOR Policy 1.4.2.
- 2.4.7. Stalking, which is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.
 - 2.4.7.1. "Course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by

any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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

2.4.8. Hazing, which includes, but is not limited to, any intentional, knowing, or reckless act committed by a person (whether individually or in concert with other persons) against another person a student or personsstudents regardless of the willingness of such other person or personsstudent or students to participate, that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or as a condition for continued membership in a group or an organization:

2.4.8.1. Is committed in the course of an initiation into, an affiliation with, or the maintenance of membership in, a student organization; and

2.4.8.2. Causes or creates a risk, above the reasonable risk encountered in the course of participation in an institution or organization (such as the physical preparation necessary for participation in an athletic team), of physical or psychological injury including:

2.4.8.2.1. Whipping, beating, striking, electronic shocking, placing of a harmful substance on someone's body, or similar activity;

2.4.8.2.2. Causing, coercing, or otherwise inducing sleep deprivation, exposure to the elements, confinement in a small space, extreme calisthenics, or other similar activity;

2.4.8.2.3. Causing, coercing, or otherwise inducing another person to consume food, liquid, alcohol, drugs, or other substances;

2.4.8.2.4. Causing, coercing, or otherwise inducing another person to perform sexual acts;

2.4.8.2.5. Any activity that places another person in reasonable fear of bodily harm through the use of threatening words or conduct;

2.4.8.2.6. Any activity against another person that includes a violation of Board or Institutional policy or a criminal violation of local, State, Tribal, or Federal law;

2.4.8.2.7. Any activity that induces, causes, or requires another person to perform a duty or task that involves violation of Board or Institutional policy a criminal violation of local, State, Tribal, or Federal law; and

2.4.8. ~~Violates any Board Policy or Institutional Policy.~~

~~• Is likely to, or would be perceived by a reasonable person as likely to, endanger the physical health of an individual or cause psychological~~

~~discomfort or distress through treatment that a reasonable person would consider to be humiliating, intimidating, or demeaning;~~

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

~~2.4.8.1-2.4.8.3.~~ _____ The express or implied permission of the individual being hazed does not make the behavior acceptable. ~~It is also a violation of this provision to solicit, aid, or attempt to aid another person in planning or committing Hazing.~~

~~2.4.8.2-2.4.9.~~ _____ Voyeurism includes, but is not limited to, any use of electronic or other devices to make an audio, video, or photographic record of another person without that person's prior knowledge and without that person's prior authorization when such a recording is likely to cause that person or a Reasonable Person injury or distress, or involves that person's intimate parts or sexual conduct involving that person.

~~2.4.8.3-2.4.10.~~ _____ Invasion of Privacy occurs when:

- An individual views another person, without that person's prior knowledge and permission, under circumstances in which the other person has a reasonable expectation of privacy; or
- An individual uses an audio recording device to record another person, without that person's prior knowledge and permission, under circumstances in which the other person has a reasonable expectation of privacy.

2.5. Discrimination and Retaliation

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

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

2.6. Housing and Living Groups

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

2.7. Use and Misuse of Substances

2.7.1. The unauthorized manufacture, sale, possession, use, or consumption of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances by students.

2.7.2. However, possession, use, or distribution of alcohol, marijuana, or controlled substances is permitted on premises controlled by the Board of Regents when:

2.7.2.1. Needed in conjunction with approved research activities;

2.7.2.2. Alcohol is possessed, used, or distributed in a lawful manner inside a designated residence hall facility occupied exclusively by upper-division and/or non-traditional students who are at least twenty-one (21) years of age;

2.7.2.3. Alcohol is possessed, used, or distributed in a lawful manner on premises controlled by the Board of Regents that have been designated by the Institution's president as places where such possession, use, and distribution may be permitted, subject to such conditions as the Institution's president may also prescribe, provided that a notice of such designation and conditions have been filed previously with the executive director of the Board of Regents; or

2.7.2.4. The possession, use, or distribution of the controlled substance is prescribed by a licensed health care professional authorized to prescribe such substances. For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23). Students who use medical marijuana pursuant to a validly issued written certification when not on property controlled by the Board may subsequently report to class or participate in activities as long as such use does not cause impairment or disrupt academic or campus activities.

2.7.2.5. Alcohol is possessed, used, or distributed in a manner that is expressly approved by a Board Policy.

2.7.3. The unauthorized possession of any drug paraphernalia.

2.8. Violation of Policy or Laws

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

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

2.9. RESERVED

2.10. Conduct by Organizations

- 2.10.1. Organizations that, formally or informally through repeated practice, initiate, encourage, support, or tolerate conduct by members, associates, or invitees that violates the provisions of this Student Code shall be subject to conduct sanctions.
- 2.10.2. The privileges of official recognition by an institution may be extended to organizations, including those that maintain residences for their members, only if such organizations agree to adopt and to enforce policies that, at minimum:
- 2.10.2.1. Prohibit the manufacture, possession, use, dispensing, or provisions of alcoholic beverages at organizational functions or in the organizational residence by persons under the age of 21 (or the legal age of use and possession in the applicable jurisdiction);
 - 2.10.2.2. Prohibit the manufacture, possession, use, or dispensing of marijuana (including cannabis used or possessed for medical purposes) or unauthorized controlled substances at organizational functions or in the organizational residence;
 - 2.10.2.3. Prohibit the expenditure of organizational funds on alcoholic beverages, marijuana (including cannabis used or possessed for medical purposes), or controlled substances;
 - 2.10.2.4. Prohibit the informal collection of monies from members, associates, or invitees to be spent on alcoholic beverages, marijuana (including cannabis used or possessed for medical purposes), or controlled substances;
 - ~~2.10.2.5.~~ 2.10.2.5. Prohibit the possession, use, or distribution of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances on premises controlled by the Board of Regents, except as explicitly permitted by Section C.2.6.2 of this Student Code;
 - ~~2.10.2.5.~~ 2.10.2.6. Prohibit hazing as defined by this policy and promote strategies for group cohesion without hazing.
 - ~~2.10.2.6.~~ 2.10.2.7. Establish conduct policies and sanctions regarding violations by individual members no less stringent than those set forth under Board Policies, except that limited use of alcoholic beverages is permissible as set out above; and
 - ~~2.10.2.7.~~ 2.10.2.8. Require that a report be filed with the Senior Student Affairs Officer each semester identifying all actions taken pursuant to the student conduct policies required in this Student Code;
- 2.11. Institutions may impose additional or more restrictive conditions on official recognition.
- 2.12. Organizations are also subject to the Board of Regents' antidiscrimination policies set forth in Board Policy 1:18. However, social fraternities and sororities that are exempt from taxation under federal law may maintain single-sex membership practices without violating antidiscrimination policies, as recognized by 20 U.S.C. 1681(a)(6).

3. Student Conduct Process

3.1. Allegations of Sexual Harassment

3.1.1. Allegations of sexual harassment against a student shall be addressed exclusively through BOR Policy 1.4.1.

3.2. Allegations other than Sexual Harassment

3.2.1. All allegations other than sexual harassment against a student shall be addressed as set forth herein. Allegations of misconduct may be reported against any student by anyone. Allegations shall be directed to the Student Conduct Officer in the Office of the Dean of Students. The reporting party will disclose the facts that form the basis for the allegation, the identities of any other witnesses, and any other relevant information regarding the alleged misconduct.

3.2.1.1. Allegations of Academic Misconduct will be reported to the Student Conduct Officer but are initially addressed through Board Policy 2.9.2.

3.2.1.2. Allegations of Human Rights Violations shall follow the process outlined in Board Policy 1.4.3.

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

3.2.1.2.2. The investigator assigned must be trained to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence, including both evidence that tends to suggest a violation and evidence that tends to suggest no violation, and take into account the unique and complex circumstances of each case.

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

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

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

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

3.2.2. The Student Conduct Officer shall make an initial determination whether the allegations, if true, would violate the Student Code. If the Student Conduct Officer determines that the allegations, if true, would violate the Student Code, the Student Conduct Officer shall conduct a pre-investigation inquiry to

determine whether the allegations are credible. This process may include speaking with witnesses and reviewing any documentation.

- 3.2.2.1. The Student Conduct Officer must not have any actual or reasonably perceived conflicts of interest and biases for or against any party involved in the initial complaint. If the institution determines that an actual or reasonably perceived conflict of interest does exist, another individual must lead the investigation on behalf of the institution.
- 3.2.2.2. As to off-campus conduct, the Student Conduct Officer shall determine whether the incident adversely affects the institution, any organizations, members of the institutional community, or the pursuit of their lawful objectives.
- 3.2.2.3. Allegations of Academic Misconduct that are not informally resolved pursuant to Board Policy 2.9.2 will enter the student conduct process here.
- 3.2.2.4. Allegations of Human Rights Violations that are not informally resolved pursuant to Board Policy 1.4.3 will enter the student conduct process here.
- 3.2.3. If the Student Conduct Officer determines that either (i) the allegations, if true, would not violate the Student Code or (ii) that the allegations are not credible, then the Student Conduct Officer should inform the complainant of this determination and inform the complainant that the allegations may be re-submitted should additional information become available.
- 3.2.4. If the Student Conduct Officer determines that the allegations, if true, would violate the Student Code and determines that the allegations are credible and will be investigated, the Student Conduct Officer shall provide written notice to the respondent within fifteen (15) days of receiving the report of alleged misconduct or notification from the Faculty Member of the need to address alleged Academic Misconduct through the Student Code.
- 3.2.5. The written notice to the respondent must include the following:
 - The alleged behavior that would be a violation of the Student Code;
 - The date and location of the alleged behavior;
 - The section(s) of the Student Code alleged to have been violated;
 - The name of the complainant;
 - A time to meet with the Student Conduct Officer to provide the respondent with the opportunity to give his/her account of the incident leading to the allegation of misconduct;
 - Information about the right to have an advisor present throughout the student conduct process;
 - Information about both the informal and formal resolution processes;

- A time for a hearing to occur no earlier than ten (10), and no later than twenty (20), days after this written notice is deemed received to address any alleged violations that are not informally resolved;
 - The minimum time limit may be waived by the respondent.
 - The maximum time limit may be extended at the discretion of the Student Conduct Officer.
- 3.2.6. At the time that the written notice to the respondent is sent, a written notice shall also be sent to the complainant containing information about the right to have an advisor present throughout the student conduct process, information about both the informal and formal resolution processes, and the time for the hearing to address any alleged violations that are not informally resolved.
- 3.2.7. The Student Conduct Officer will conduct an investigation of the allegations, which may include speaking with witnesses and reviewing any documentation. Only in instances where the Student Conduct Officer determines that there is sufficient evidence to establish that the respondent violated the Student Code by a preponderance of the evidence will the allegations proceed to informal or formal resolution.
- 3.2.7.1. For matters involving Human Rights Violations where an investigation was conducted pursuant to Board Policy 1.4.3, no additional investigation is required.
- 3.2.7.2. If the Student Conduct Officer determines that there is insufficient evidence to establish that the respondent violated the Student Code by a preponderance of the evidence, the Student Conduct Officer will inform both parties of this fact and will cancel the hearing. This notification should also inform that parties that the investigation may be re-opened should additional information become available.
- 3.3. Interim Measures
- In certain circumstances, the Senior Student Affairs Officer, or a designee, may impose interim measures that go into effect immediately, prior to a hearing before a Student Conduct Panel, and remain in effect until no longer needed.
- 3.3.1. Interim measures are intended to protect the interests of both the complainant and the respondent prior to a hearing. Interim measures may include, but are not limited to, no-contact directives, residence modifications, academic modifications and support, institutional work schedule modifications, interim residence suspension, or interim suspension. Interim measures that restrict the ability of either party to discuss the investigation should be avoided, as they may inhibit the ability of either party to obtain and present evidence or otherwise to defend their interests. Written notice of interim measures shall be provided to the party to whom the interim measures are directed.
- 3.3.1.1. In circumstances involving allegations of stalking, interim measures must be provided upon the request of a complainant if such measures are reasonably available.

- 3.3.1.2. In fairly assessing the need for a party to receive interim measures, the Senior Student Affairs Officer, or a designee, may not rely on fixed rules or operating assumptions that favor one party over another, nor make such measures available only to one party.
 - 3.3.1.3. Interim measures should be individualized and appropriate based on the information gathered by the institution, making every effort to avoid depriving any student of his/her education.
 - 3.3.1.4. The interim measures needed by each student may change over time, and the Senior Student Affairs Officer, or a designee, should communicate with each student throughout the student conduct process to ensure that any interim measures are necessary and effective based on each student's evolving needs.
- 3.3.2. Interim suspension may be imposed only for one or more of the following purposes:
- 3.3.2.1. To ensure the safety and well-being of members of the institutional community or preservation of institutional property or other property located on premises controlled by the institution;
 - 3.3.2.2. To ensure a student's own physical or emotional safety and well-being; or
 - 3.3.2.3. To ensure the normal operations of the institution where a student poses an ongoing threat of disruption or, or interference with, the normal operations of the institution.
- 3.3.3. During the interim suspension, the student may be denied access to residence facilities, the campus (including classes), and all other institutional activities or privileges.
- 3.3.4. A student placed on interim suspension shall be given written notice of interim measures, which shall include:
- 3.3.4.1. The reasons for the interim suspension;
 - 3.3.4.2. The parameters of the interim suspension; and
 - 3.3.4.3. Information concerning the right to appeal the interim suspension.
- 3.3.5. Interim Suspension Appeal Process
- 3.3.5.1. The student must submit a written request for a meeting to the Senior Student Affairs Officer.
 - 3.3.5.2. The Senior Student Affairs Officer will schedule a meeting with the student as soon as practical and no later than three (3) days after receiving the written request. At this meeting, the student is provided the opportunity to raise any objections to the interim suspension or to request alternative interim measures.
 - 3.3.5.3. The Senior Student Affairs Officer has sole discretion regarding interim measures.

3.4. Informal Resolution

- 3.4.1. The Student Conduct Officer may speak separately and individually with the complainant and the respondent to determine whether the alleged misconduct can be resolved through informal resolution.
 - 3.4.1.1. In matters involving allegations of Human Rights violations, informal resolution may not take the form of having the complainant and the respondent be in the same room at the same time, unless both parties agree in writing.
 - 3.4.1.2. In matters involving allegations of Human Rights violations, the Student Conduct Officer should consider whether the informal resolution is equitable and will end the misconduct, prevent its recurrence, and address its effects.
- 3.4.2. Informal resolution may be reached where:
 - 3.4.2.1. The parties involved mutually agree to a full resolution of the alleged misconduct that is acceptable to the Student Conduct Officer.
 - 3.4.2.1.1. This must be documented in writing and signed by the complainant, respondent, and Student Conduct Officer.
 - 3.4.2.2. The respondent waives a formal hearing by admitting to the misconduct and accepting the proposed conduct sanctions.
 - 3.4.2.2.1. This must be documented in writing and signed by the respondent and the Student Conduct Officer.
 - 3.4.2.2.2. This type of informal resolution is not available in matters involving allegations of Human Rights violations.
- 3.4.3. Partial informal resolution may be reached where the respondent admits to the misconduct but does not accept the proposed conduct sanctions. When this occurs, the process moves to formal resolution with the hearing being limited to the question of appropriate conduct sanctions.
 - 3.4.3.1. This must be documented in writing and signed by the respondent and the Student Conduct Officer.
 - 3.4.3.2. In matters involving allegations of Human Rights violations, the complainant must also agree in writing to this partial informal resolution.
- 3.4.4. Informal resolution shall be final and the parties who agreed in writing to informal resolution waive any right to appeal otherwise available under Board Policy 3.4.1.
- 3.4.5. The Student Conduct Officer's involvement in attempting to informally resolve the allegation of misconduct does not impact the Student Conduct Officer's ability to later serve as the Student Conduct Panel or a member thereof in the formal resolution process.

3.4.6. Informal resolution may be reached at any time before the Chair issues any findings, conclusions, and, when a violation is found, conduct sanctions it determines to be appropriate through the Formal Resolution process.

3.4.6.1. If an informal resolution is reached, the Student Conduct Officer shall prepare written findings and conclusions, and any sanctions resulting from a violation during the informal resolution process. If the complaint included more than one allegation of misconduct, each allegation must have a separate decision.

3.5. Formal Resolution

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

3.5.2. The composition of the Student Conduct Panel shall be determined as follows:

3.5.2.1. For matters where the Student Conduct Officer serves as Chair of the Student Conduct Panel, the Student Conduct Officer shall have sole discretion regarding whether the Student Conduct Panel includes:

3.5.2.1.1. Option 1 – only the Student Conduct Officer; or

3.5.2.1.2. Option 2 – the Student Conduct Officer and any institutional employee or employees or independent contractor authorized by the Senior Student Affairs Officer to determine whether a student has violated the Student Code and to recommend imposition of conduct sanctions,

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

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

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

3.5.3.1. Hearings shall be conducted in private. Witnesses other than the complainant and the respondent may only be present during the hearing while presenting their information.

- 3.5.3.2. The Chair shall have sole discretion and final decision-making authority over the following:
- Whether an individual's conduct interferes with the hearing and requires that individual's removal;
 - Whether written information, materials, documents, and statements submitted are relevant and will be accepted for consideration by the Student Conduct Panel;
 - All questions about the interpretation of the student conduct process; and
 - Whether to have separate or joint hearings when a hearing would involve more than one respondent;
- 3.5.4. Neither the complainant nor the respondent are required to attend or participate in the hearing, and such decision will have no bearing on the question of whether the respondent violated the Student Code.
- 3.5.5. The respondent has no obligation to provide any information, materials, documents, or witnesses, or answer any questions and is presumed to not have violated the Student Code. The burden is on the Institution to gather sufficient evidence to reach a fair, impartial determination as to whether the alleged violation of the Student Code occurred.
- 3.5.6. If the complainant or respondent wants the Student Conduct Panel to review any materials or documents or wants to present any witnesses at the hearing, such materials and documents and/or witness lists must be submitted to the Chair by the following deadlines in order to be considered:
- In matters alleging Human Rights violations, all materials and documents and/or witness lists must be submitted at least seventy-two (72) hours before the hearing. Additionally, a copy of the final report prepared by the EEO Coordinator will be provided to the complainant, respondent, and the Student Conduct Panel members.
 - For all other matters, all materials and documents and/or witness lists must be submitted at least twenty-four (24) hours before the hearing.
- The Chair will promptly provide the other party and the Student Conduct Panel members a copy of any materials, documents, and witness lists submitted.
- 3.5.7. The complainant and the respondent have the right to be assisted by an advisor of their choice, at their own expense. Ordinarily, no more than two advisors for each student shall be permitted. The advisor is limited to advising the student directly, and is not permitted to speak to anyone else, or participate directly, in any hearing.
- 3.5.8. The Student Conduct Officer shall record the audio of the hearing.
- 3.5.9. Generally, the hearing will be conducted in the following order:

- 3.5.9.1. The Chair will ask each individual present at the hearing to identify him/herself by providing his/her name and role at the hearing (e.g., complainant, respondent, member of the Student Conduct Panel, etc.).
- 3.5.9.2. The Chair will remind the respondent:
- Of the materials that the Student Conduct Panel received prior to the hearing;
 - Of the right to have an advisor present;
 - Of the right to refuse to speak as a witness against him/herself;
 - That the refusal to speak as a witness against him/herself will have no bearing on the question of whether the respondent violated the Student Code;
 - Of the alleged behavior that would be a violation of the Student Code; and
 - Of the section(s) of the Student Code alleged to have been violated.
- 3.5.9.3. The Chair will provide the complainant with the opportunity to engage in the hearing. If the complainant agrees to engage, then:
- 3.5.9.3.1. The Chair will provide the complainant the opportunity to provide any additional relevant factual details that were not previously provided. The complainant may choose to do so or may decline and maintain the right to not provide information, materials, documents, or answer questions. The complainant may decline but still present witnesses.
- 3.5.9.3.2. The Chair will ask the complainant to present any witnesses, who will be brought to the hearing one at a time, and ask questions of the witness.
- 3.5.9.3.3. The Student Conduct Panel will then ask questions of the witness.
- 3.5.9.3.4. The Chair will ask the respondent for any questions for the witness. The Respondent will provide the Chair any questions in writing.
- 3.5.9.3.5. The Chair will ask the witness any questions provided by the respondent that the Chair determines to be relevant.
- 3.5.9.3.6. The Chair will ask the complainant to present the next witness. The process described above shall repeat for each witness until the complainant has presented all of its witnesses.
- 3.5.9.4. The Chair will provide the respondent the opportunity to engage in the hearing. If the respondent agrees to engage, then:
- 3.5.9.4.1. The Chair will provide the respondent the opportunity to provide any additional relevant factual details that were not previously provided. The respondent may choose to do so or may decline and maintain the right to not provide information, materials, documents,

- or answer questions. The respondent may decline but still present witnesses.
- 3.5.9.4.2. The Chair will ask the respondent to present any witnesses, who will be brought to the hearing one at a time, and ask questions of the witness.
 - 3.5.9.4.3. The Student Conduct Panel will then ask questions of the witness.
 - 3.5.9.4.4. The Chair will ask the complainant for any questions for the witness. The complainant will provide the Chair any questions in writing.
 - 3.5.9.4.5. The Chair will ask the witness any questions provided by the complainant that the Chair determines to be relevant.
 - 3.5.9.4.6. The Chair will ask the respondent to present the next witness. The process described above shall repeat for each witness until the respondent has presented all of its witnesses.
- 3.5.9.5. The Student Conduct Panel may ask the complainant and/or the Respondent whether s/he agrees to answer questions. The Student Conduct Panel may then ask questions of either or both parties who agree to answer questions.
 - 3.5.9.6. The Student Conduct Panel will meet in a closed session to discuss and make its recommendation, which closed session shall not be audio recorded.
- 3.5.10. The Student Conduct Panel shall review all information and materials presented to it and shall decide by majority vote whether the respondent violated the Student Code by a preponderance of the evidence (i.e., more likely than not). Decision-making techniques or approaches that apply sex stereotypes or generalizations should be avoided so that the hearing process proceeds objectively and impartially.
 - 3.5.11. The Student Conduct Panel shall prepare written findings to support its determination. If multiple allegations of misconduct exist, a decision should be reached separately for each allegation. These written findings shall include:
 - Concise statements of each factual finding;
 - Brief explanations of whether and why the factual findings support a conclusion that the conduct either violated or did not violate the Student Code;
 - These must address each factual element that must be satisfied to establish that conduct has violated the Student Code.
 - Any initial, interim, or final decisions by the institution; and
 - If a violation is found, recommendations of appropriate conduct sanctions and supporting rationale for the conduct sanctions.
 - 3.5.12. The Student Conduct Panel shall forward its written findings to the Chair. The Chair has sole discretion to adopt or reject any portion of the written findings.

- 3.5.12.1. If any portion of the written findings are rejected, the Chair shall issue new written findings it determines to be appropriate for such portion(s), and will provide the Student Conduct Panel with an explanation for its decision.
- 3.5.12.2. The Chair shall determine the effective date of any conduct sanctions imposed, which effective date should be on or after the exhaustion of the appeal as a matter of right. However, interim measures may remain in place, or be instituted, until the effective date of any conduct sanctions.
- 3.5.13. The Chair's written findings and information about appeal rights, shall be provided to the respondent. When FERPA allows, the complainant will receive the permitted information simultaneously. See Section C.3.5.1 below for more information.
- 3.5.13.1. In matters involving allegations of Academic Misconduct, the Chair's written findings shall also be provided to the faculty member.
- 3.5.13.2. In matters involving allegations of Human Rights violations, the complainant must also be provided information about appeal rights.
- 3.5.14. The audio record of the hearing shall be the property of the institution and shall be maintained by the Student Conduct Officer. No other person may record the hearing.
- 3.5.14.1. The audio record and its contents shall be confidential and may only be used for purposes of any appeals. Any person who discloses the contents of the audio record to parties not involved in the appeal shall be subject to conduct sanction.
- 3.5.14.2. In the event of an appeal, the respondent shall be given access to the audio record for purposes of preparing an appeal. When the alleged misconduct involves allegations of Human Rights violations, the complainant shall be given access to the audio record for purposes of preparing an appeal. Access shall be provided at such places and times as the Senior Student Affairs Officer may direct
- 3.5.14.3. Except as required by law, the institution shall not be required to change the form in which the record is maintained.

3.6. Sanctions

3.6.1. Individual Conduct Sanctions

- 3.6.1.1. In each case in which the Chair determines that a respondent has violated the Student Code, the Chair shall determine and impose appropriate conduct sanction(s). Where a violation of Board Policy is established, and where a conduct sanction is mandated under Board Policy, that conduct sanction shall be imposed.
- 3.6.1.1.1. Conduct sanction decisions must be made for the purpose of deciding how best to enforce the Student Code and should reflect a proportionate response to the violation.

- 3.6.1.1.2. In matters involving Human Rights Violations, the Chair should consider whether the sanctions are equitable and will end the misconduct, prevent its recurrence, and address its effects.
- 3.6.1.1.3. In matters involving Human Rights violations, the Chair should consider the impact of separating the respondent from his/her education before imposing a conduct sanction of suspension or expulsion.
- 3.6.1.2. In matters involving allegations of Academic Misconduct that are informally resolved pursuant to Board Policy 2.9.2, the Student Conduct Officer will receive the information from the faculty member and shall determine and impose appropriate conduct sanction(s).
- 3.6.1.3. Complainants shall be informed in writing and at the same time as the respondent of any outcome and conduct sanctions imposed in the following circumstances:
 - 3.6.1.3.1. When the conduct sanction involves remedial action that directly relates to the complainant (e.g., a directive requiring the respondent to not have contact with the complainant)
 - 3.6.1.3.2. Where the allegations against the respondent would also constitute a crime of violence or non-forcible sex offense as defined by FERPA; or
 - 3.6.1.3.3. Where the allegations against the respondent would also constitute Human Rights violations. In this circumstance, the rationale for the result must also be included.
 - 3.6.1.3.4. Where the institution finds that a hostile environment exists, the Institution shall also inform the complainant of other steps the institution has taken to eliminate the hostile environment.
- 3.6.1.4. FERPA allows institutions to disclose the final results of a conduct proceeding when the Chair determines that the respondent violated the Student Code and that violation falls within the definition of a crime of violence or a non-forcible sex offense as defined by FERPA. For purposes of this subsection, “final results” means the name of the respondent, the violation committed, and any conduct sanction(s) imposed by the institution.
- 3.6.1.5. FERPA allows institutions to inform the parents or legal guardians of a respondent younger than twenty-one (21) years of age that the respondent has violated Institutional Policies concerning the use or possession of alcohol or controlled substances.
- 3.6.1.6. The following conduct sanctions may be imposed upon any respondent found to have violated the Student Code. More than one of the conduct sanctions listed below may be imposed for any single violation. Imposition of a conduct sanction may be delayed or suspended on such conditions as the Student Conduct Officer may prescribe.

- Warning – A statement to the respondent that the respondent has violated the Student Code of Conduct.
- Probation – Probation is for a designated period of time and includes the probability of more severe conduct sanctions if the respondent is later found to have engaged in any additional violation(s) the Student Code during the probationary period.
- Loss of Privileges – Denial of specified privileges for a designated period of time. The privileges of continued participation in Institutional activities, access to Institutional facilities or residences may be conditioned upon participation in or completion of educational programming at the student's expense.
- Fines – Monetary payments.
- Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service, money, or material replacement.
- Educational Sanction – work assignments, essays, service to the Institution, community service, workshops, or other related educational activities.
- Residence Suspension – Separation of the respondent from the Institution's residence facilities for a definite period of time, after which the respondent is eligible to return. Conditions for return to the residence facilities may be specified.
- Residence Expulsion – Permanent separation of the respondent from the institution's residence facilities. A sanction of residence expulsion will take the form of residence suspension pending completion of the appeals process.
- Suspension – Separation of the respondent from the institution for a definite period of time, after which the respondent is eligible to return. Conditions for return may be specified. A respondent who has been suspended from one Institution may not enroll at another institution until the period of suspension has ended.
- Expulsion – Permanent separation of the respondent from the Institution. A respondent who has been expelled from one institution may not enroll at another institution. A sanction of expulsion will take the form of suspension pending completion of the appeals process.
- Withholding Degree – the institution may withhold awarding a degree otherwise earned until the completion of the student conduct process or the completion of all conduct sanctions imposed.
- Revoking Admission and/or Degree – the institution may revoke admission to, or a degree awarded from, the institution for violation of Institutional standards for obtaining admission or the degree, or for

other serious violations of the Student Code committed by the respondent prior to graduation.

- 3.6.1.7. Conduct sanctions shall not be made part of the respondent's permanent academic record, but shall become part of the respondent's conduct record. The respondent's conduct record containing conduct sanctions other than suspension, expulsion, revoking admission and/or a degree, or withholding a degree, will be expunged seven (7) years after the date of the original finding of a violation of the Student Code. The respondent's conduct record containing any of the four conduct sanctions above shall be maintained permanently. Where restitution is required of a respondent, the institution reserves the right to disclose all portions of the conduct file as may be necessary to obtain a judgment in a court of competent jurisdiction. Such files shall be preserved at least until all necessary compensation has been obtained.
- 3.6.1.8. Students enrolled in one institution shall be held accountable for their conduct while visiting or enrolled at other institutions. Students may be required, as a condition of continued enrollment, reenrollment, or transfer or admission to another institution, to appear at the institution where the alleged misconduct took place, at their own expense, for a conduct hearing and to answer allegations based on their conduct while at that institution.
- 3.6.1.8.1. Any conduct sanction imposed by one institution shall be effective at all other institutions. A respondent suspended at one institution shall not be able to enroll at another institution until the period of suspension has ended. A respondent who has been expelled from one Institution may not enroll at another institution.
- 3.6.1.8.2. When a respondent is brought forward on allegations of misconduct by another institution, any conduct sanction issued after a finding of a violation shall be determined by the institution that brought forward the allegations of misconduct. Suspension or expulsion may only be imposed after first consulting with the Senior Student Affairs Officer from the institution where the respondent is enrolled.

3.6.2. Organizational Conduct Sanctions

- 3.6.2.1. The following conduct sanctions may be imposed upon organizations:
- Those conduct sanctions listed above in Section C.3.5.1.

3.7. Appeals

3.7.1. Appeal as a Matter of Right

- 3.7.1.1. The respondent may appeal a decision reached by the Chair. In matters involving allegations of Human Rights violations, the complainant may also appeal a decision reached by the Chair. The appeal must be in writing and must be submitted to the Senior Student Affairs Officer no later than five (5) days after notice of the Chair's decision is deemed received.

- 3.7.1.2. The written appeal must cite at least one (1) of the following reasons for review and must include supporting arguments and documentation as to why an appeal should be granted on those grounds.
- 3.7.1.2.1. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;
 - 3.7.1.2.2. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;
 - 3.7.1.2.3. The conduct sanction(s) imposed were not appropriate for the violation of the student Code that the respondent was found to have committed; and/or
 - 3.7.1.2.4. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.
- 3.7.1.3. An appeal shall be limited to a review of:
- The verbatim record of the initial hearing;
 - Supporting documents submitted as part of the initial hearing; and
 - Supporting documents submitted in support of the appeal reason(s)
- 3.7.1.4. The Senior Student Affairs Officer will provide the other party a copy of the appeal and a reasonable amount of time to submit any materials to be considered.
- 3.7.1.5. The Senior Student Affairs Officer will provide the Appellate Board with the materials submitted. The Appellate Board will review the materials submitted and provide a written recommendation to the Senior Student Affairs Officer as soon as practicable. The Senior Student Affairs Officer has sole discretion to adopt or reject the recommendation.
- 3.7.1.5.1. In instances where the respondent appeals a decision reached by the Chair, sanctions or conditions may not be increased, introduced for the first time, or extended.
 - 3.7.1.5.2. If the recommendation is rejected, the Senior Student Affairs Officer will provide the Appellate Board with a written explanation for his/her decision.
 - 3.7.1.5.3. The Senior Student Affairs Officer shall determine the effective date of any conduct sanctions imposed. The effective date of any conduct sanctions shall not be delayed pending any further appeals.
- 3.7.1.6. The Senior Student Affairs Officer's written decision shall be provided to the parties, along with the Appellate Board's recommendation and, if rejected, the Senior Student Affairs Officer's written explanation.
- 3.7.1.6.1. The Senior Student Affairs Officer may return the matter to the hearing panel for reconsideration or to the Title IX/EEO

Coordinator for additional investigation, in light of the written decision.

3.7.2. Appeal to the President of the Institution

- 3.7.2.1. The respondent may appeal a decision reached by the Senior Student Affairs Officer. In matters involving allegations of Human Rights violations, the complainant may also appeal a decision reached by the Senior Student Affairs Officer.
- 3.7.2.2. The appeal must be in writing and must be submitted to the President's Office no later than five (5) days after notice of the Senior Student Affairs Officer's decision is deemed received.
- 3.7.2.3. The written appeal must cite at least one (1) of the following reasons for review and must include supporting arguments and documentation as to why an appeal should be granted on those grounds.
 - 3.7.2.3.1. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;
 - 3.7.2.3.2. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;
 - 3.7.2.3.3. The conduct sanction(s) imposed were not appropriate for the violation of the student Code that the respondent was found to have committed; and/or
 - 3.7.2.3.4. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.
- 3.7.2.4. The President has sole and complete discretion as to whether to agree to review an appeal, including what materials to consider. However, the President will not consider any reasons for review that were not previously raised in the appeal to the Appellate Board.
- 3.7.2.5. If the President agrees to review an appeal, the President will provide the other party/parties a copy of the appeal and a reasonable amount of time to submit any materials to be considered.
- 3.7.2.6. The President will provide a written decision to the parties, and to the Senior Student Affairs Officer. The decision may be a substantive one, or may merely indicate that the President has declined to review the appeal.
 - 3.7.2.6.1. The President may return the matter to the Senior Student Affairs Officer or hearing panel for reconsideration, or to the Title IX/EEO Coordinator for additional investigation, in light of the written decision.

3.7.3. Appeal to the Board of Regents

- 3.7.3.1. After exercising and exhausting all appeals available at the institutional level, the respondent may appeal a decision reached by the President. In

matters involving allegations of Human Rights violations, the complainant may also appeal a decision reached by the President after exercising and exhausting all appeals available at the Institutional level.

- 3.7.3.2. The appeal must be in writing and must be submitted to the Executive Director of the Board of Regents no later than thirty (30) days after notice of the President's decision is deemed received. The appeal must include the following:
 - Supporting arguments and documentation;
 - All documentation provided by the institution, including, at a minimum, the President's decision, the Senior Student Affairs Officer's decision, and the Chair's decision.
- 3.7.3.3. Written appeals that fail to include supporting arguments and documents, and the documentation provided by the institution will be rejected.
- 3.7.3.4. An appeal submitted to the Executive Director that is not covered by subsection e) below may be considered by the Executive Director. In these instances, the Executive Director has sole and complete discretion as to whether to agree to review an appeal, including what materials to consider.
 - 3.7.3.4.1. If the Executive Director agrees to review an appeal, the Executive Director will provide the other party a copy of the appeal and a reasonable amount of time to submit any materials to be considered.
 - 3.7.3.4.2. The Executive Director will provide a written decision to the parties, and to the President.
 - 3.7.3.4.3. The Executive Director may return the matter to the President, Senior Student Affairs Officer, or hearing panel for reconsideration or to the Title IX/EEO Coordinator for additional investigation, in light of the written decision.
- 3.7.3.5. An appeal submitted to the Executive Director must be considered by the Board of Regents where a student has been expelled or suspended based upon alleged violations of Board Policy 3.4.1; or a disciplinary action allegedly deprived the student of a right or privilege protected by a specific term or provision of Board Policy or state or federal constitution, law, or regulation.
 - 3.7.3.5.1. The Executive Director will have fifteen (15) working days within which to attempt, at his or her discretion, a resolution through informal means.
 - 3.7.3.5.2. If no informal resolution has been effected within the fifteen (15) working days, the Executive Director will refer the matter to a hearing examiner for reconsideration pursuant to SDCL § 1-26 using the contested case proceedings. At the conclusion of the contested case proceedings, the hearing examiner will provide a

recommendation to the Executive Director for the disposition of the matter by the Board.

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

FORMS / APPENDICES:

None

SOURCE:

BOR February 1969; RR, 12:06, 1977; BOR 1980; BOR April 1987; BOR June 1990; BOR December 1994; BOR October 1996; BOR December 1999; BOR March 2006; BOR December 2006; BOR August 2009; BOR August 2011; BOR December 2013; BOR June 2014; BOR August 2015; BOR May 2016; BOR August 2016; BOR December 2017; BOR December 2018; September 2019 (Clerical); BOR August 2020; BOR June 2021; October 2023 (Clerical).

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Prevention of Dating Violence, Domestic Violence, Sexual Assault, ~~and~~ Stalking, and Hazing

NUMBER: 1.4.2

A. PURPOSE

To define processes and procedures related to prevention of dating violence, domestic violence, sexual assault, ~~and~~ stalking, and hazing.

B. DEFINITIONS

None

C. POLICY

1. State and federal policies proscribe dating violence, domestic violence, sexual assault, ~~and~~ stalking, and hazing, often treating such actions as criminal offenses. These forms of misconduct interfere with the ability of victims to realize the benefits of the educational, cultural and social programs offered by the universities and special schools. Any student, employee or other person participating in institutional activities or using institutional facilities who engages in conduct that would constitute dating violence, domestic violence, sexual assault, ~~or~~ stalking, or hazing, as defined in this policy, or sexual assault, domestic abuse or stalking as defined under South Dakota law, in circumstances that implicate the person's fitness to study, work, participate in the functions or use the facilities at the institution may be expelled, terminated, denied further participation in institutional programs or use of institutional facilities, or otherwise disciplined, upon notice and opportunity to be heard. The decision to pursue disciplinary charges of dating violence, domestic violence, sexual assault, ~~or~~ stalking, or hazing will not preclude pursuit of additional, related charges arising from the same facts.
2. Each institution will review reports of such conduct to determine whether the employee or student be disciplined, and each institution will establish programs designed to help prevent dating violence, domestic violence, sexual assault, ~~or~~ stalking, and hazing;
 - 2.1. by holding perpetrators accountable for their conduct;
 - 2.2. by encouraging victims to report incidents; and
 - 2.3. by informing students, staff, and visitors of:
 - 2.3.1. Board policies proscribing, dating violence, domestic violence, sexual assault, ~~or~~ stalking, or hazing, including procedures compliant with BOR Policies 1.4.1, ~~and~~ 1.4.3, and 3.4.1 to enforce those policies;

~~2.3.2.~~ strategies individuals may use to protect themselves;

~~2.3.2.2.3.3.~~ prevention strategies intended to stop hazing before it occurs;

~~2.3.3.2.3.4.~~ contact information for institutional officials responsible for investigating reports of, dating violence, domestic violence, sexual assault, ~~or~~ stalking, and hazing;

~~2.3.4.2.3.5.~~ institutional resources to assist in reporting incidents and preserving evidence; and

~~2.3.5.2.3.6.~~ institutional and community resources to assist victims.

3. As used in this policy,

3.1. Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

3.1.1. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

3.1.2. For the purposes of this definition,

3.1.2.1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

3.1.2.2. Dating violence does not include acts covered under the definition of domestic violence.

3.2. Domestic violence means:

3.2.1. a felony or misdemeanor crime of violence committed

3.2.1.1. By a current or former spouse or intimate partner of the victim;

3.2.1.2. By a person with whom the victim shares a child in common;

3.2.1.3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

3.2.1.4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

3.2.1.5. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

3.2.2. For purposes of this section violent crimes are determined under the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program, which classifies four offenses involving involve force or threat of force as violent crimes: murder and nonnegligent manslaughter, rape, robbery, and aggravated assault, as set forth in 34 C.F.R. part 668 Appendix A to Subpart D

of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program:

- 3.2.2.1. Murder and Nonnegligent Manslaughter means the willful (nonnegligent) killing of one human being by another.
 - 3.2.2.2. Rape means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - 3.2.2.3. Robbery means the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence or by putting the victim in fear.
 - 3.2.2.4. Aggravated Assault means an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
- 3.3. Sexual assault means any offense that constitutes rape, fondling, incest, or statutory rape:
- 3.3.1. Rape has the same meaning as given above in § 3.2.2.2.
 - 3.3.2. Fondling means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - 3.3.3. Incest means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by SDCL § 25-1-6, which provides that:
 - 3.3.3.1. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the half as well as of the whole blood, are null and void from the beginning, whether the relationship is legitimate or illegitimate. The relationships provided for in this section include such relationships that arise through adoption.
 - 3.3.4. Statutory Rape means sexual intercourse with a person who is under the statutory age of sixteen.
- 3.4. Stalking means:
- 3.4.1. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

3.4.1.1. Fear for the person's safety or the safety of others; or

3.4.1.2. Suffer substantial emotional distress.

3.4.2. For the purposes of this definition:

3.4.2.1. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

3.4.2.2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

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

3.5. Hazing means any intentional, knowing, or reckless act committed by a person (whether individually or in concert with other persons) against another person or persons regardless of the willingness of such person or persons to participate, that:

3.5.1. Is committed in the course of an initiation into, an affiliation with, or the maintenance of membership in, a student organization; and

3.5.2. Causes or creates a risk, above the reasonable risk encountered in the course of participation in the institution of higher education or the organization (such as the physical preparation necessary for participation in an athletic team), of physical or psychological injury including:

3.5.2.1. Whipping, beating, striking, electronic shocking, placing of a harmful substance on someone's body, or similar activity;

3.5.2.2. Causing, coercing, or otherwise inducing sleep deprivation, exposure to the elements, confinement in a small space, extreme calisthenics, or other similar activity;

3.5.2.3. Causing, coercing, or otherwise inducing another person to consume food, liquid, alcohol, drugs, or other substances;

3.5.2.4. Causing, coercing, or otherwise inducing another person to perform sexual acts;

3.5.2.5. Any activity that places another person in reasonable fear of bodily harm through the use of threatening words or conduct;

3.5.2.6. Any activity against another person that includes a criminal violation of local, State, Tribal, or Federal law; and

3.5.2.7. Any activity that induces, causes, or requires another person to perform a duty or task that involves a criminal violation of local, State, Tribal, or Federal law.

~~3.5.3.6.~~ Consent may be implied from the facts and circumstances surrounding the commission of an act. Consent will not be found where an act has been done through the use of force, coercion, or threats of immediate and great bodily harm. Submission does not equal consent, and to establish consent, a party charged must utterly negate any element of force, coercion, or threat. Consent, once given, may be retracted. Consent will not be found under any of the following circumstances:

~~3.5.1.3.6.1.~~ _____ if the victim is less than thirteen years of age; or

~~3.5.2.3.6.2.~~ _____ through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or

~~3.5.3.3.6.3.~~ _____ if the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or

~~3.5.4.3.6.4.~~ _____ if the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or

~~3.5.5.3.6.5.~~ _____ if the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

4. To the extent that this policy is intended to implement protections arising under the criminal law, amendments to those underlying statutes will be deemed to have been incorporated hereto on the effective date of such amendments.
5. For purposes relating to the annual security report required under the Jeanne Clery ~~Disclosure of Campus Security Policy and Campus Crime Statistics Safety~~ Act (20 USC § 1092(f)), conduct constituting Dating Violence, Domestic Violence Sexual Assault, and Stalking under § 3 of this policy shall be reported as crime, irrespective of its treatment under South Dakota law.
 - 5.1. For purposes of its annual security report, a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, the South Dakota criminal law classifications align with the definitions set out in § 3 of this policy as follows:
 - 5.1.1. Consent is defined as set forth in § 3.5 above;
 - 5.1.2. Dating violence includes domestic abuse as defined in SDCL ch 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are not cohabiting and who have never cohabited;
 - 5.1.3. Domestic violence includes domestic abuse as defined in SDCL ch 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are cohabiting and who have cohabited;
 - 5.1.4. Sexual assault includes rape as defined in SDCL § 22-22-1; sexual contact with a minor as defined in SDCL § 22-22-7; sexual contact as defined in SDCL § 22-22-7.1 without consent as set forth in SDCL § 22-22-7.4 or with a person incapable of consenting as set forth in SDCL § 22-22-7.2; and attempts to commit such offenses as defined in SDCL § 22-4-1; and

5.1.5. Stalking includes stalking as defined in SDCL ch 22-19A.

FORMS / APPENDICES:

None

SOURCE:

BOR December 2013; BOR June 2014, BOR June 2015; BOR August 2020; October 2023 (Clerical).