SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Facilities Use by Private Parties

NUMBER: 6.13

A. PURPOSE

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

B. DEFINITIONS

1. **Affiliated Entity:** organizations, such as institutional foundations, whose legal purpose includes support of the institution and its activities, organizations that have been authorized by the institution to use it name and marks, and student organizations recognized by the institutions, as well as the State of South Dakota and its political subdivisions, and their instrumentalities.
2. **Commercial Purposes:** activities that involve the exchange of goods or services for valuable consideration and speech that relates solely to the economic interests of the speaker and audience and proposes a commercial transaction.
3. **Disrupt:** any actions that infringe institutional rules, interrupt institutionally sponsored or authorized instructional, research or service activities, or substantially interfere with the opportunity of other persons to use institutional grounds or facilities for their intended or authorized purposes.
4. **Events:** speeches, presentations, social gatherings, religious ceremonies, entertainments, youth camps or other activities that pose no substantial risk of injury to persons and property and that are generally consistent with the kinds of activity sponsored by the institution itself.
5. **Facilities and Grounds:** buildings, structures, internal streets and sidewalks, parking facilities, athletic facilities, landscaping and grounds owned or occupied by the institution but excludes municipal streets or sidewalks or public highways or rights of way that abut or traverse a campus.
6. **Private Party:** any individual or group other than the institution, its affiliated entities, or their officers, agents, faculty, or staff when acting on their behalf.
7. **Working Days:** those days when the office of the institution are open for business.

C. POLICY

1. Institutional Facilities

Institutional facilities and grounds embody investments by students and taxpayers to advance the educational, research, and service missions of the institution. They are not open to the public for assembly, speech, or other activities as are the public streets, sidewalks, parks, or seats of government. Institutional facilities and grounds are selected, designed, and operated to balance aesthetic and utilitarian considerations, to provide settings conducive to learning and research, and to provide venues to expose students to high and popular cultural activities. These purposes define the priorities for their use by private parties.

1.1. Casual visitors may enter institutional facilities and grounds to conduct business with the institution, to attend institution sponsored events, exhibits or programs that are open to the public, to deliver goods ordered by residents or to traverse the grounds without stopping, or for purposes incidental to personal family or social matters involving students or institutional staff.

1.2. Private parties may request permission to use facilities or grounds for private meetings or events. Such requests may be granted to the extent that institutional program schedules permit if the requested use is lawful and otherwise consistent with this policy, poses no risk of harm to persons or property, and will not disrupt the intended use of the facilities or grounds by the institution, its students, staff, or other visitors.

1.3. Permission to use facilities or grounds for private meetings or events shall be contingent upon agreement to avoid disruption of institutional uses of the facilities or grounds, interference with students or employees, or damage, fouling or littering facilities, grounds or other property. Private users shall be responsible for the cleanliness and order of any facilities or grounds that they use.

1.4. Institutional facilities and grounds are tax exempt public facilities and, as such, are not generally available for use by private parties for commercial purposes. Institutions may contract with private parties to provide goods and services on its behalf, to provide access to dedicated advertising venues or to engage in limited mission-related testing, research or economic development activities. As part of their service to the state and their host communities, institutions may designate specific venues where third parties may schedule occasional activities that may have incidental commercial purposes.

1.5. Some institutional facilities and grounds may be restricted, and private parties may only venture there if specifically invited by a person with authority to invite them. Buildings or facilities that are ordinarily open during regular business hours shall be deemed to be restricted areas if they have been locked.

2. Private Parties

Private Parties must request prior authorization to use a facility or a portion of the institutional grounds. Each institution shall develop and shall make public practices and rules to implement this policy. In particular,

2.1. Each Institution shall appoint a person or persons to receive and to administer private party requests for permission to use institutional facilities or grounds for meetings or events.

2.2. Each institution shall designate those facilities, or portions thereof, or portions of the grounds that may be used by private parties for meetings or events, and shall specify whether, when and how private parties may use application in conjunction with their meetings or events. Each institution shall differentiate between meeting rooms and classrooms that are appropriate for meetings involving up to one hundred persons and lecture halls, auditoria, outdoor areas and other places that are appropriate for larger events and gatherings. If an institution elects to permit limited activities for commercial purposes, it shall identify which facilities are available for such purposes and shall indicate what kinds of commercial purposes may be pursued in the facilities.

2.3. Each institution shall designate those days, including finals week and the week preceding it, when facilities and grounds will not be available for private meetings or events.

2.4. Each institution shall establish and publicize local rules to implement this policy. These rules shall provide, at minimum, that

2.4.1. Private parties may request permission to use institutional facilities or grounds for meetings or events that will not interfere with the use of the facilities by the institution or institutionally affiliated organizations.

2.4.2. Private parties seeking permission to use institutional facilities or grounds shall complete and submit written applications on forms developed by the institution.

2.4.3. Private parties requesting permission to use facilities or grounds for events shall submit completed forms and all necessary attachments no less than three (3) working days prior to the date on which they wish to use the facilities or grounds

2.4.4. Private parties may not reserve facilities or grounds for regularly scheduled meetings, thereby precluding institutional uses of the facility.

2.4.5. Private parties who have been granted permission to use institutional facilities shall agree to abide by all institutional regulations and shall not publicize their meetings or events in ways that suggest co-sponsorship by the institution.

2.4.6. Private parties shall agree to restore facilities and grounds to the state of cleanliness and repair in which they found them or to pay for custodial or repair services at standard university rates and for extraordinary restoration or replacement expenses at cost.

2.4.7. Private parties shall agree to avoid actions that disrupt pedestrian or vehicular traffic on campus grounds, interfere with the instructional, research, service or administrative activities of the institution or disrupt meetings or events sponsored by the institution or other private parties.

2.4.8. Private parties seeking permission to use facilities for commercial purposes or to sponsor events with planned attendance of five hundred people or more

shall provide security and shall purchase event insurance in the amount of one million dollars, naming the State of South Dakota, the Board, the institution and their officers, agents and employees as named insureds.

2.4.9. Private parties may be charged fees at published rates to cover the costs institutions incur to provide private parties access to the selected facilities or grounds and to maintain and to repair such facilities; however, any such fee(s) must be based on definite and objective criteria that are not content-based.

2.4.10. Private parties may be allowed to purchase at published rates institutional services to prepare the facilities for private use, to monitor use of the facilities during meetings or events and to restore the facilities to the prior state.

2.4.11. Private parties wishing to serve, or to offer for sale, food or beverages shall make any necessary arrangements with the institutional food service provider, if applicable.

2.4.12. Private parties may not use, possess, distribute, or permit the use or possession of controlled substances or marijuana (including cannabis used or possessed for medical purposes) on institutional property. Possession of alcohol on institutional property is governed by Board Policy 4.7.1.

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

2.4.14. Private parties may not prohibit the carrying of concealed pistols, stun guns, or mace/pepper spray in institutional spaces beyond the restrictions set forth in Board Policy 1.4.5. If a private party wishes to restrict or limit such items, the party must request a designation for a special event exception from the institution, and provide all relevant information requested by the institution in determining whether to grant a designation. If the institution grants a designation for a special events exception, all requirements of Board Policy 1.4.5.C. must be followed and the private party must acknowledge and agree to assume the cost of any associated requirements such as metal detectors and armed security personnel needed to effectuate a designation for a special event exception.

2.5. Each institution shall establish procedures to implement its local rules. These procedures shall provide, at minimum, that

2.5.1. Copies of the Board and institutional rules, information about institutional facilities and grounds available for use by private parties, schedules of fees

and all forms needed to apply for permission shall be published, together with contact information to enable readers to obtain clarification of the meaning or application of rules or assistance in completing applications

2.5.2. The institution shall act upon applications no later than the third (3rd) working day after receipt of a completed application.

2.5.3. Except as provided in §2.5.5, below, the institution shall grant applications for meetings or events if,

2.5.3.1. The applications, and all required attachments, have been completed; and

2.5.3.2. The meetings or events will comply with the requirements and limitations contained in this policy and the institutional policy(ies) or rule(s) that implement it;

2.5.4. If the institution denies an application for a meeting or event, it shall provide the private party with a written explanation for the denial.

2.5.5. The institution may deny applications for meetings or events only if,

2.5.5.1. The private party has failed to comply with the requirements of § 2.5.3, above, or the meeting or event or the requested schedule otherwise does not meet the standards stated in that section.

2.5.5.1.1. If permission is denied due to a conflict with the academic calendar or with previously scheduled activities, the institution shall propose an alternative facility or place if available for the same time, or an alternative time, if available, for the same place.

2.5.5.2. The private party has on prior occasions made material misrepresentations regarding the nature or scope of a meeting or event previously permitted or has violated the terms of prior use agreements.

2.5.5.3. Any of the following grounds are present:

2.5.5.3.1. The application for permit contains a material falsehood or misrepresentation;

2.5.5.3.2. The applicant is legally incompetent to contract or to sue and be sued; or

2.5.5.3.3. The applicant has on prior occasions damaged institutional property and has not paid in full for such damage, or has other outstanding and unpaid debts to the institution.

2.5.5.4. Private parties whose prior conduct would justify denial of permission to use facilities or grounds may not avoid denial by creating new organizations, by associating themselves with other private organizations or by otherwise associating themselves with

others for the purposes of avoiding denial of permission under this section.

2.5.6. A written denial shall advise private parties of their right to appeal the denial by filing a signed, written appeal with the official designated by the institutional chief executive officer to receive such appeals. Any denial issued pursuant to this policy shall be deemed effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant, or deposit of the written denial in the United States mail.

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

2.5.6.2. The person receiving the appeal shall not be the same official who issued the original denial

2.5.6.3. The completed written appeal must be presented within five (5) working days after the denial was issued.

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

2.5.6.4.1. That the denial was based upon an incorrect assessment of material fact or

2.5.6.4.2. That it involved a misinterpretation, misapplication or violation of the requirements of Board or institutional policy.

Mere conclusions, general allegations and speculative statements cannot establish a factual ground for the claim that Board or institutional policy has been misinterpreted, misapplied or violated.

2.5.6.5. The institution will respond to such appeals via email within two (2) working days after their receipt by the institution. Should the institution deny the appeal, it shall provide in its response the procedure for appealing the decision to the institutional chief executive officer.

2.5.6.6. If the private party remains dissatisfied, the private person may appeal to the institutional chief executive officer by filing a written appeal on the same approved form within five working days after the institution issued its response.

2.5.6.7. The institutional chief executive officer shall have ten (10) working days after receipt of such an appeal to conduct such an investigation as may be warranted under the circumstances and to issue a written decision addressing the concerns raised by the private party, determining whether denial was proper under §2.5.3, and, if the appeal is denied, informing the private party of the discretionary appeal to the Executive Director of the Board of Regents.

2.5.6.8. After exhausting institutional appeals, the private party may appeal the determination of the institutional chief executive officer by

submitting a written appeal to the Executive Director of the Board of Regents within ten (10) working days from the effective date in the institutional chief executive officer decision. Such an appeal shall include the application, the denial, the appeals and decisions exchanged at the institutional level, and the required appeal form.

2.5.6.9. The Executive Director of the Board of Regents shall have ten (10) working days after receipt of such an appeal to review the appeal and its documentation and to determine whether to attempt to mediate a resolution. Within five (5) working days thereafter, the Executive Director shall either issue a preliminary recommendation or refer the matter to a hearing examiner to determine whether the matter presents contested issues of material fact warranting a hearing or whether denial was proper under § 2.5.3, as a matter of law.

2.5.6.9.1. If the Executive Director issues a preliminary recommendation that would deny the private party relief, the private party shall be allowed ten (10) working days from the transmission or deposit in the mails of the Executive Director's written response to provide reasons why that response should not become final. The recommendation of the Executive Director and any responses by the private party will be forwarded to the Board at the next regularly scheduled meeting

2.5.6.9.2. If the Executive Director appoints a hearing examiner using the contested case proceedings pursuant to SDCL ch. 1-26, the hearing examiner shall contact the institution and the private party within ten (10) working days from the date of appointment to schedule any necessary exchanges of authorities, hearings or evidentiary hearings.

2.5.6.9.2.1. The hearing examiner will make a recommendation to the Board which will take the form of findings, conclusions and an order of disposition and will be issued within fifteen working days of the hearing or of the expiration of any briefing schedule established by the hearing examiner. A copy of the recommendation will be provided to the institution and to the private party. The recommendation must be based solely on the record, pertinent institutional and Board policies, this agreement and the law of the land.

2.5.6.9.3. The Board will make a final decision based upon the recommendation of the hearing examiner or the Executive Director where a matter is to be resolved as a matter of law. In addition, it may review the record pertinent to the issues and may hear testimony from individuals as it deems appropriate. Such decision will be made at the next regularly scheduled Board meeting following receipt of the recommendation, provided the

recommendation is received not less than ten (10) working days prior to the Board meeting. If not received in time, the recommendation will be acted upon at the subsequent meeting. If the Board rejects or modifies the recommendation of the hearing examiner or the Executive Director, the Board will provide the institution and the private party with the reasons for rejecting or modifying the recommendation.

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

FORMS / APPENDICES:

None

SOURCE:

BOR August 2007; BOR April 2009; BOR December 2018; BOR June 2021, October 2023 (Clerical); BOR June 2024; SDCL 13-53-56 to 13-53-57 (SL 2025; ch 86, §4); BOR July 2025.