

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

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

**NUMBER:** 6.13.1

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### **A. PURPOSE**

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

### **B. DEFINITIONS**

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

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

## C. **POLICY**

### 1. **Policy Statement**

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

### 2. **General Guidelines**

- 2.1. The Board and its institutions are committed to providing an educational, research, and service environment that is conducive to the development of each individual. As a public entity, the Board and its institutions provide both formal and informal forums for the expression of ideas and opinions as long as it is done within the context of federal and state law and Board and institutional policies, and does not impede pedestrian and/or vehicular traffic, disturb or interfere with normal academic, administrative or student activities, or involve prohibited conduct.
- 2.2. Because institutional facilities and grounds are tax-exempt public facilities and grounds, they are not generally available for use for commercial purposes, subject to the specific exception set forth in Board Policy 3.2.3 and 6.13.

### 3. **Outdoor Areas**

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

designated by the institution in which the expressive activity occurs and the implementation of Board Policy 6.13, so long as the expressive activities or related conduct do not violate any other applicable Board or institutional policy or constitute prohibited conduct.

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

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

- 4.1. Each institution shall designate and publicize:
  - 4.1.1. The institutional office(s) for scheduling and coordinating large scale events;
  - 4.1.2. The contact information for the person or office to which appeals of this or related institutional policies are submitted, who shall not be the person or office that schedules and coordinates large scale events;
  - 4.1.3. A form, whether physical or electronic, for reserving facilities or grounds; and
  - 4.1.4. The grounds for granting or denying a reservation in keeping with Board Policy 6.13(C)(2.5).
- 4.2. An institution may maintain and enforce additional lawful reasonable time, place, and manner restrictions on the use of outdoor areas within the institutional boundaries, so long as any such restrictions are clear, narrowly tailored in the service of a significant institutional interest, published, content-neutral, viewpoint-neutral, and provide alternate means of engaging in the expressive activity. Any such restrictions shall allow students and employees to spontaneously and contemporaneously assemble in outdoor areas within the boundaries of the institution, unless otherwise properly restricted, as long as their conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

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

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

- 5.3. The institution may require the requesting party to provide a parade route, hire security, ensure egress to facilities, or take other steps to maintain the safety of the campus; however, any such requirement(s) must be based on definite and objective criteria that are not content-based. All participants must follow all Board and institutional policies and applicable law.
- 5.4. Access to, and use of, facilities and grounds at institutions shall be equally available to all student organizations, regardless of the ideological, political, or religious beliefs of the organization.

## **6. Guidelines for Expressive Activity by Guests**

- 6.1. Guests of student organizations, students, and employees may engage in expressive activity in outdoor areas in conformity with all applicable policies and in a manner that does not constitute prohibited conduct, or they may seek to reserve select campus facilities pursuant to Board Policy 6.13.
- 6.2. Hosts of guests who are planning a large-scale event must contact the designated institutional office in advance of the large-scale event. A representative of the designated institutional office will work with the requesting person to either meet the request or find a reasonable alternate time and location.
- 6.3. By inviting the guest(s), the student organization, student, or employee, in their individual capacity, assumes responsibility for the compliance, safety, behavior, and violations of their guest(s).

## **7. Enforcement**

- 7.1. Student organizations', students', and employees' guests found violating Board or institutional policies, including this policy, will be subject to immediate removal from the institutional grounds, without prior warning, by appropriate institutional agents or officials and may be subject to appropriate legal action.
- 7.2. Institutions retain the right to cancel or discontinue an event with immediate effect if the institution becomes aware that the event constitutes prohibited conduct. Failure to comply with the provisions of this policy, any applicable BOR or university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations may result in suspension, discontinuance and/or cancellation of the event.
- 7.3. Students and/or student organizations violating this policy will be subject to disciplinary action pursuant to the Student Code of Conduct.
- 7.4. Employees violating this policy will be subject to disciplinary action pursuant to applicable Board Policy.

## **8. Appeals**

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

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

- 8.2. The completed written appeal must be presented within five (5) working days after the violation occurred.
- 8.3. The appeal shall state specifically facts that, if proven, would demonstrate:
  - 8.3.1. That the denial was based upon an incorrect assessment of material fact or
  - 8.3.2. That it involved a misinterpretation, misapplication or violation of the requirements of Board or institutional policy.

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

- 8.4. The designated institutional office will respond to such appeals via email within two (2) working days after their receipt by the institution. Should the institutional office deny the appeal, it shall provide in its response a copy of the reservation and the procedure for appealing the decision to the institutional chief executive officer.
- 8.5. If the individual remains dissatisfied, they may appeal to the institutional chief executive officer by filing a written appeal on the same approved form within five (5) working days after the institution issued its response.
  - 8.5.1. The institutional chief executive officer shall have five (5) working days after receipt of such an appeal to conduct such an investigation as may be warranted under the circumstances and to issue a written decision addressing the concerns raised by the individual, determining whether denial was proper and, if the appeal is denied, informing the individual of the discretionary appeal to the Board of Regents.
- 8.6. After exhausting institutional appeals, the individual may appeal the determination of the institutional chief executive officer by submitting a written appeal to the Executive Director of the Board within ten (10) working days from the effective date of the institutional chief executive officer decision. Such an appeal shall include the completed reservation form, the denial, the appeals and decisions exchanged at the institutional level, and the required appeal form.
  - 8.6.1. The Executive Director of the Board shall have ten (10) working days after receipt of such an appeal to review the appeal and its documentation and to determine whether to attempt to mediate a resolution. Within five (5) working days thereafter, the Executive Director shall either issue a preliminary recommendation or refer the matter to a hearing examiner to determine whether the matter presents contested issues of material fact warranting a hearing or whether denial was proper as a matter of law.
  - 8.6.2. If the Executive Director issues a preliminary recommendation that would deny the individual relief, the individual shall be allowed ten (10) working days from the transmission or deposit in the mail of the Executive Director's written response to provide reasons why that response should not become final.
  - 8.6.3. If the Executive Director appoints a hearing examiner using the contested case proceedings pursuant to SDCL ch. 1-26, the hearing examiner shall

contact the institution and the individual within ten (10) working days from the date of appointment to schedule any necessary exchanges of authorities, hearings or evidentiary hearings.

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

8.6.4. The Board will make a final decision based upon the recommendation of the hearing examiner or the Executive Director where a matter is to be resolved as a matter of law. In addition, it may review the record pertinent to the issues and may hear testimony from individuals as it deems appropriate. Such decision will be made at the next regularly scheduled Board meeting following receipt of the recommendation, provided the recommendation is received not less than ten (10) working days prior to the Board meeting. If not received in time, the recommendation will be acted upon at the subsequent meeting. If the Board rejects or modifies the recommendation of the hearing examiner or the Executive Director, the Board will provide the institution and the private party with the reasons for rejecting or modifying the recommendation.

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

## **FORMS / APPENDICES:**

None

## **SOURCE:**

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