

Office/Contact: Division of Technology and Security

Source: SDBOR Policy 1.4.8; SDBOR Policy 6.13

Link: <https://public.powerdms.com/SDRegents/documents/1729417>;

<https://public.powerdms.com/SDRegents/documents/1723022>

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## SOUTH DAKOTA STATE UNIVERSITY

### Policy and Procedure Manual

SUBJECT: Exclusion of Members of the Public for Disruption of University Activities or for Misconduct

NUMBER: 10:8

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#### 1. Purpose

This policy implements SDBOR Policy 1.4.8 and sets forth the policies and procedures for exclusion from University activities or facilities and grounds for members of the public who disrupt University activities or engage in misconduct.

#### 2. Definitions

- a. **Disrupt:** this term, and its cognates, includes any actions that infringe University rules, interrupt University-sponsored or authorized instructional, research or service activities, or substantially interfere with the opportunity of other persons to participate in such activities or to use University grounds or facilities for their intended or authorized purposes.
- b. **Facilities and Grounds:** buildings, structures, internal streets and sidewalks, parking facilities, athletic facilities, landscaping, and groups owned or occupied by the University, excluding municipal streets or sidewalks or public highways or rights of way that abut or traverse the campus.
- c. **Member of the Public:** any individual, group, or organization other than the University, another institution within the SDBOR system, or their current officers, agents, employees, or students. Former University or SDBOR system institution officers or employees, University alumni, persons who have attended classes but who are not currently enrolled in classes offered by the University or within the SDBOR system, persons providing contracted services, invitees and visitors, and all others would be deemed to be members of the public for purposes of this policy.
- d. **Misconduct:** physical violence or the threat of physical violence against any member of the University community; unauthorized entry into, remaining in, or use of University facilities or grounds; theft of or damage to University property; commission of unlawful acts in connection with University activities, in University facilities and grounds, or on University property; violation of any SDBOR or University policies or other rules or procedures; or failure to comply with lawful directions of University officers, including police or security officers.
- e. **University Activities:** activities organized and undertaken by the University through its officers, employees, contractors or students; activities carried out by other institutions or entities through their officers, employees, contractors or students in cooperation with the

University; and activities carried out by individuals or organizations that are duly authorized to make use of University facilities or grounds pursuant to SDBOR Policy 6.13.

### 3. Policy

- a. The University conducts a broad range of activities in furtherance of its teaching, research, and service mission. Oftentimes these activities are conducted within facilities or on grounds acquired and maintained at public expense to support the University's mission. Members of the public do not have rights to participate in such activities, to attend or observe them, or to use University facilities and grounds. From time to time, the University may allow or invite members of the public to do so, subject to such reasonable and customary conditions as the University may specify.
- b. The proper conduct of University activities depends upon the cooperation of participants and onlookers. Where students or employees engage in disruptive behavior, SDBOR and University policies permit discipline that may restrict further participation in certain activities or access to certain facilities or that may result in expulsion or termination of employment. Members of the public may also disrupt University activities. Accordingly, the University must respond to disruptive behavior by visitors or others whose association with the University does not involve a status as student or employee.
- c. Members of the public who disrupt University activities or engage in misconduct may be excluded from University activities, facilities and grounds.
  - i. Exclusion is presumed to be of permanent duration unless a different duration is specifically stated at the time that the individual, group, or organization is notified of its exclusion.
  - ii. Any individual or organization that has been excluded may petition the Office of Safety and Security to have the exclusion modified or rescinded.
    1. A request will not be entertained during the first thirty-six (36) months from the date that notice of exclusion was issued.
    2. The individual or organization seeking modification or rescission of the exclusion will have the burden of showing changed circumstances that will assure that disruption or misconduct will not recur.

### 4. Procedures

- a. The V.P. for Technology and Security, or designee, or the successor individual who is assigned responsibility for implementation of this policy by the University President will be authorized to issue notices of exclusion under this policy, as appropriate.
  - i. Any individual who has knowledge that a member of the public has disrupted a University activity or engaged in misconduct may report the matter to the V.P. for Technology and Security, successor, or designee.
  - ii. Upon receipt of such a report, the V.P. for Technology and Security, successor, or designee, will make such inquiries as may be necessary to be satisfied that

the report is credible, will contact the member of the public to discuss the report, and will make such other investigations as may be appropriate to determine whether there appears to be a reasonable, good faith basis for believing that the reported conduct occurred.

1. At the time that the V.P. for Technology and Security, successor, or designee, first contacts the member of the public, they will inform the member of the public that retaliation against anyone whom the member of the public believes responsible for the report will result, at minimum, in issuance of a notice of exclusion.
  2. Unless specifically required by SDBOR or University policy, the V.P. for Technology and Security, successor, or designee, need not disclose the identity of the individual or individuals who reported or who witnessed the disruption or misconduct.
- iii. If the V.P. for Technology and Security, successor, or designee, concludes that there is a reasonable, good faith basis for believing that the reported conduct occurred, the V.P. for Technology and Security, or designee, may issue a notice of exclusion.
1. The notice of exclusion may be delivered in person to the individual member of the public or, in the case of an organization, to any individual who holds himself or herself out as an official of the member of the public, in which cases it will become effective upon delivery.
    - a. Alternatively, the notice of exclusion may be deposited in the United States mail addressed to the last known address of the individual member of the public or, in the case of an organization, to any individual who holds himself or herself out as an official of the member of the public, and will take effect three (3) working days after.
  2. The notice of exclusion shall indicate that the individual or organization excluded may appeal the notice of exclusion by filing a written petition with the University President within ten (10) working days of the effective date of notice.
    - a. The completed written appeal must be presented within five (5) working days after the denial was communicated, transmitted, or deposited in the mail.
    - b. The appeal shall state specifically facts that, if proven, would demonstrate:
      - i. that the denial was based upon an incorrect assessment of material fact,
      - ii. that it involved a misinterpretation, misapplication or violation of the requirements of SDBOR or University policy, or
      - iii. that the cited actions constituted speech or expressive conduct protected under the First Amendment when they occur on government property or at government activities that is open to the public for expressive purposes.
        1. Persons claiming that their speech or expressive conduct is protected under the First Amendment

must also allege facts that, if proven, would show:

- a. That the University opened the facilities or the activities where the expression occurred for private speech or expressive conduct;
  - b. That the person was within the class of private persons permitted to use the facility or to join in the activity for purposes of speech of expression; and
  - c. That the content of the person's speech or expressive conduct addressed a subject that the University allowed to be addressed at the time and place where the speech or conduct occurred.
2. Mere conclusions, general allegations, and speculative statements cannot establish a factual ground for the claim that SDBOR or University policy has been misinterpreted, misapplied, or violated.
- c. Filing an appeal will not suspend the exclusion notice, and the exclusion notice will remain in effect during the appeal.
- b. Upon receipt of the written appeal, the University President shall have fifteen (15) working days 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.
    - i. The University President may delegate responsibility to conduct this review, provided that the individual charged with evaluating the appeal may not have been personally involved or interested in the underlying facts or initial institutional decision.
      1. In the event that an appeal involves a claim that the individual's actions constituted protected speech or expressive conduct, the appeal will be deemed to be equivalent to a denial of permission to use University facilities pursuant to SDBOR Policy 6.13 and the appeal will be resolved through the procedures established under SDBOR Policy 6.13.
    - ii. The decision of the University President shall be final and shall stipulate its effective date.

#### 5. Responsible Administrator

The Vice President for Technology and Security, successor, or designee is responsible for annual and ad hoc review of this policy and its procedures. The University President is responsible for the approval of this policy.

SOURCE: Approved by President on 10/02/2017. Revised 02/01/2024 (clerical).