

Office/Contact: Office of Student Affairs

Source: SDBOR Policy 3:4

Link: <https://www.sdbor.edu/policy/documents/3-4.pdf>

Associated Forms: Incident Report Form; Conduct Appeal Form; Hearing Plea Form

SOUTH DAKOTA STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Student Conduct Code

NUMBER: 3:1

1. Purpose

The University exists for the transmission of knowledge, the pursuit of truth, the development of students, and the general wellbeing of society. Free inquiry and free expression are indispensable to the attainment of these goals. Freedom to teach and to learn depends upon appropriate opportunities and conditions in the classroom, on campus, and in the University community. Students must exercise their freedom with responsibility. This policy implements and is governed by SDBOR Policy 3:4 and sets forth the provisions of the University Student Conduct Code (“Student Code”) and sanctions for violating such provisions.

2. Definitions

The following terms have the stated meanings in this code:

- a. University: South Dakota State University.
- b. Student: includes all persons taking courses from the University, both full-time and part-time, enrolled in undergraduate, graduate, professional or special topic courses.
- c. Faculty Member: any person hired by the University to conduct classroom or other academic activities.
- d. University Official: includes any person employed by the University, performing assigned administrative or professional responsibilities.
- e. Member of the University Community: includes any person who is a student, faculty member, University official, any person employed by the University, volunteer, or guest. A person’s status in a particular situation shall be determined by the Vice President for Student Affairs, or designee.
- f. University Premises: includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the University, including adjacent streets and sidewalks.
- g. Organization: any number of persons who have been granted University registration or recognition.

- h. Student Conduct Body: any institutional employee or employees or independent contractor authorized by the Vice President for Student Affairs, or designee, to determine whether a student has violated the Student Code and to recommend imposition of sanctions.
- i. Student Conduct Officer: any University officer authorized on a case-by-case basis by the Vice President for Student Affairs, or designee, to impose sanctions upon students found to have violated the Student Code. The Vice President for Student Affairs, or designee, may authorize a student conduct officer to serve as one of the members of a student conduct body, to determine the facts and to impose a sanction without the assistance of a student conduct body or to receive and consider the findings and recommendations of a student conduct body. Nothing shall prevent the Vice President for Student Affairs, or designee, from authorizing the same student conduct officer to impose sanctions in all cases.
- j. Respondent: a student, group of students, or student organization against whom conduct charges have been brought.
- k. Complainant: a member of the University community who has brought charges under this code against any student, group of students, or student organization.
- l. Appellate Board: any person or persons authorized by the University President to consider an appeal from a student conduct body's determination that a student has or has not violated the Student Code or from the sanctions imposed by the student conduct officer.
- m. Dishonesty: includes any action taken in order to deceive or to assist another to deceive the University or any of its representatives. The motive for action, e.g., personal advantage, interference with another's prospective advantage or interference with University operations, shall not be considered. Dishonesty is established where it is shown that:
 - i. An action, either directly or indirectly, shall affect the information or apparent facts upon which the University relies in discharging its academic or administrative functions;
 - ii. The natural and reasonably expected consequences of relying upon such information includes the drawing of an inaccurate assessment of the true facts; and
 - iii. The actor know or should have known that the action would probably mislead the University.
- n. Obscenity: means that to the average person the dominant theme of the material taken as a whole appeals to prurient interest, the material is patently offensive under contemporary community standards, and the material is utterly without redeeming social value (SDCL § 22-24-27).
- o. Crime of Violence: an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against

the person or property of another may be used in the course of committing the offense. It includes, but is not limited to, the following offenses: criminal homicide, forcible sex offense, robbery, aggravated assault, and arson, as these terms are defined in 2015 APPENDIX A TO SUBPART D to 34 CFR part 668ⁱ, as well as burglary of an occupied structure of dwelling and kidnapping.

- p. The term “consent” has the same meaning assigned to it in SDBOR Policy 1:17.1(3)(E): 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:
 - i. If the victim is less than thirteen (13) years of age; or
 - ii. 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
 - iii. If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
 - iv. If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
 - v. If the victim is thirteen (13) years of age, but less than sixteen (16) years of age, and the perpetrator is at least three (3) years older than the victim.
- q. The term “shall” is used in the imperative sense.
- r. The term “may” is used in the permissive sense.
- s. The term “policy” includes the provisions of this policy as supplemented by consistent written regulations of the University found in the Residential Life Handbook, Graduate or Undergraduate catalogs, parking policies, computer use policies, or other official publications.

3. Policy

Students at the University are subject to all federal, state and local laws, as well as to University rules and regulations, and are subject to student conduct action under this policy for breach of laws and regulations. Students and other members of the University community are expected to be familiar with the laws, rules, and regulations.

- a. Prohibited Conduct
 - i. Jurisdiction of the University

1. The University shall have authority over its students and recognized student organizations.
 - a. If a student is enrolled with more than one institution under the control of the SDBOR, the institution in which the majority of a student's credits are offered during an enrollment period shall have jurisdiction over the student for conduct purposes.
 - b. Where students are also employees, they may be subject to concurrent authority. Conduct proceedings under this code may be initiated irrespective of any action taken by the University, except that, if an individual has been subject to conduct hearings as an employee, and if those hearings afforded notice and an opportunity to be heard that are substantially equivalent to those provided herein, the facts found through that process, insofar as they are relevant to infractions of this code, shall be given effect hereunder.
2. Conduct proceedings may be initiated in response to conduct that occurs on University premises or at events officially sponsored by the University, conduct that arises out of membership in the University community or conduct elsewhere, otherwise proscribed under this code, that adversely affects the University, its affiliated organizations, or members of the University community or their pursuit of its objectives.

ii. Conduct – Rules and Regulations

Members of the University community reasonably expect that they shall be able to live, study, work, and relax in a safe and orderly environment that is conducive to achievement of the educational, scholarly, and public service missions of the University. The following regulations, while not all-inclusive, identify forms of conduct that infringe upon those expectations, disrupt the orderly progress of University activities and, so, expose the actors to conduct sanctions.

Any student, group of students, or student organization found to have committed the following misconduct is subject to the conduct sanctions outlined in Section 3(b) (Conduct Policies and Procedures) below.

1. Acts of dishonesty, including, but not limited to, cheating, plagiarism, fabrication, misrepresentation, and other forms of dishonesty relating to academic achievement, as defined in University Policy 2:4 and SDBOR Policy 3:4.
2. Disruption or obstruction of teaching, research, administration, conduct proceedings, other University activities, including its public service functions on or off campus, appearances by speakers or presenters, whether invited by the University, by recognized organizations or by authorized facility users, or other authorized non-University activities.
3. Disruption of or interference with the activities of persons who are studying, sleeping, or otherwise engaging in activities that are consistent

with the normal and expected uses of University facilities, or of student residential facilities, whether controlled by the University or not.

4. Acts of aggression including threats, intimidation, coercion, or other conduct that threatens or endangers the health or safety of any person.
 - a. Tampering with fire and life safety equipment including, without limitation, fire alarms, sprinkler systems, first aid equipment, and laboratory safety apparatus;
 - b. Conduct that threatens or endangers a student's own health or safety may also violate this section;
 - c. "Aggression" means not only intentional infliction of harm, but also conduct that intentionally subjects another to unwelcome, offensive, physical contact or that puts another person in reasonable fear that the actor intends immediately to subject person to intentional injury or unwelcome, offensive touching.
5. Subjection of another person to any sexual act against that person's will or without consent, including any conduct that would constitute a sex offense, whether forcible or non-forcible, under SDCL Chapter 22-22.
 - a. Persons who are under the influence of alcohol, marijuana, or other illegal controlled substances at the time that they are subjected to the sexual act shall be presumed incapable of effective consent.
6. Discriminatory conduct proscribed under University Policies 4:4, 4:5 and 4:6 and SDBOR Policies 1:17, 1:17.1 and 1:18 includes sexual harassment, racial harassment, harassment on other grounds identified in University Policy 4:4 and SDBOR Policy 1:17, or harassment on any other grounds, directed against individuals. Additionally, University Policy 4:5 and SDBOR Policy 1:17.1 proscribe conduct that would constitute dating violence, sexual assault, domestic violence and stalking.
 - a. Bullying may not meet the standard of harassment, but is still proscribed at the University. Bullying infringes on the rights of others and is manifested in verbal, physical, written, or electronic acts, alone or in combination that are contrary to the goals of the University. Bullying also includes retaliation against a member of the University community for asserting or alleging an act of bullying.
7. Attempted or actual theft of services or property, including intellectual properties, of the University or property of a member of the University community or other personal or public property.
8. Attempted or actual damage to property, including intellectual properties, of the University or property of a member of the University community

or other personal or public property.

9. Possession of stolen property on University property or at a University sponsored activity, where the property is known to be stolen.
10. Participation in hazing. Hazing includes any activity intended to test another person's willingness or readiness to join a group (or to maintain full status in a group) by subjecting that person to humiliation, degradation, or other risks of emotional or physical harm. Willing participation in a hazing exercise by the person being hazed does not excuse hazing.
11. Failure to comply with directions of University officials or law enforcement officers acting in performance of their duties or failure to identify oneself to these persons when requested to do so.
12. Failure to comply with emergency response measures as communicated by University officials, including measures adopted in response to, or in anticipation of, pandemic illness or other public health emergencies.
13. Unauthorized possession, duplication, or use of keys to any University premises, unauthorized entry to or use of University premises or unauthorized possession, entry into or use of University equipment, data processing systems or information management or storage materials, facilities or systems.
14. Violation of published University or SDBOR policies, rules, or regulations.
15. Violation of federal, state, or local law on University premises or at University-sponsored or -supervised activities.
16. Making bomb threats.
17. The manufacture, sale, possession, use, or consumption of alcohol, marijuana, or controlled substances by students on any property controlled by the SDBOR or used in connection with any University sponsored activity; except that alcohol may be served at social activities held in other locations subject to the restrictions set out in this article and in guidelines for alcohol usage set out in University Policy 4:7 and SDBOR Policy 4:27.
18. Unauthorized possession of containers with the original purpose of containing or holding alcohol, or drug paraphernalia as defined in SDCL § 22-42A-1.
19. Illegal or unauthorized possession of firearms, other items defined as dangerous weapons in SDCL § 22-1-2(10), fireworks, explosives, tasers, BB guns, or dangerous chemicals on University premises.

20. Participation in a campus demonstration which disrupts the normal operations of the University and infringes on the rights of other members of the University community; leading or inciting others to disrupt schedules or normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus.
 - a. Orderly picketing and other forms of peaceful protest are permitted on University premises if in accordance with SDBOR Policy 6:13; however, the University is obligated to assure the safety of individuals, the protection of property, and the continuity of the education process.
21. Obstruction of the free flow of pedestrian or vehicular traffic on University premises or at University-sponsored or -supervised functions.
22. Conduct classified under state law or local ordinance as disorderly, lewd, indecent, or a breach of peace.
23. Aiding, abetting, inviting, or procuring another person to breach the peace or to violate this policy.
24. Theft of computer time or other abuse of computer access, including, but not limited to:
 - a. Unauthorized entry into a file to use, copy, read, delete, or change the contents, or for any other purpose;
 - b. Unauthorized transfer of a file;
 - c. Unauthorized use of another individual's identification or account;
 - d. Use of computing facilities to interfere with the work of another student, faculty member, or University official;
 - e. Use of computing facilities to send obscene or abusive messages or to engage in unlawful activities, including those involving uses that infringe intellectual properties;
 - f. Use of computing facilities to interfere with normal operation of the University's computing system;
 - g. Making, acquiring, or using unauthorized copies of computer software, or violating terms of applicable software license agreements;
 - h. Attempting to circumvent data protection schemes or tampering with security;

- i. Violating University or SDBOR internet policies.

25. Abuse of the Conduct System, including, but not limited to:

- a. Failure to obey the summons of a student conduct body or University official;
- b. Falsification, distortion, or misrepresentation of information before a student conduct body;
- c. Disruption of or interference with a conduct proceeding;
- d. Initiation of a proceeding knowingly without cause;
- e. Attempting to discourage an individual's proper participation in, or use of, the conduct system, including retaliation against persons who brought charges or gave testimony;
- f. Attempting to influence the impartiality of a member of a student conduct body prior to, or during the course of, the conduct proceeding;
- g. Harassment (verbal or physical) or intimidation of a member of a student conduct body prior to, during, or after a conduct proceeding;
- h. Failure to comply with the sanction(s) imposed under this Student Code;
- i. Influencing or attempting to influence another person to commit an abuse of the conduct system.

26. Invasion of Privacy: No person may use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, any other person without clothing, or any other person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. Nor may a person use an audio recording device for use of unauthorized eavesdropping when another person or persons has a reasonable expectation of privacy.

iii. Other Conduct

Conduct not expressly proscribed may also subject students, groups of students, or student organizations to conduct sanction where it has the purpose and effect of infringing interests protected by the rules set out in this policy, other provisions of SDBOR or University policy, or comparable regulations duly established by other educational institutions or public or private authorities; or

where it demonstrates that an individual disregards the need to conform to reasonable rules and regulations intended to protect the health and safety of others and to assure their orderly access to and beneficial use of University resources and facilities.

iv. Student Organizations

Student 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 code shall be subject to conduct sanction.

1. The privileges of official recognition by the University may be extended to student organizations, including those that maintain residences for their members, only if such organizations agree to adopt and to enforce policies that, at minimum:
 - a. Prohibit the possession, use, or dispensing of alcoholic beverages at organizational functions or in the organizational residence by persons under the age of 21 and the provision of alcoholic beverages to persons under the age of 21;
 - b. Prohibit the manufacture, possession, use, or dispensing of marijuana or illegal controlled substances at organizational functions or in the organizational residence;
 - c. Prohibit the expenditure of organizational funds on alcoholic beverages, marijuana, or illegal controlled substances;
 - d. Prohibit the informal collection from the members or residence of monies to be spent on alcoholic beverages, marijuana, or illegal controlled substances;
 - e. Require that whenever this section permits consumption of alcoholic beverages at organizational functions or in the organizational residence, the function must adhere to the University and SDBOR guidelines for alcohol usage set out in University Policy 4:7 and SDBOR Policy 4:27;
 - f. Establish conduct policies and sanctions regarding violations by individual members or residents no less stringent than those set forth under SDBOR policies, except that limited use of alcoholic beverages is permissible as set out above, and except that, in lieu of suspension or expulsion, the organization shall suspend or revoke the privileges of membership, including residence privileges;
 - g. Require that a report be filed with the Vice President for Student Affairs, or designee, each semester identifying all actions taken pursuant to the conduct policies required in this code;

- h. The University may impose additional or more restrictive conditions on official recognition.
 2. Student organizations are subject to the University's antidiscrimination policies set forth in University Policies 4:3 and 4:6 and SDBOR Policies 1:18 and 1:19.
- v. No provision of this code shall be interpreted to deprive students of rights guaranteed them under state or federal law.
- vi. Violation of Law and University Conduct Sanctions
 1. Students charged with a violation of federal, state, or local laws may be subject to conduct sanction where the conduct would fall within the proscriptions set out in this Student Code or other University regulations. 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 conduct proceedings.
 2. Conduct proceedings may be instituted against a student charged with violation of a law which is also a violation of this Student Code; for example, if both violations result from the same factual situation, without regard to the status of civil litigation in court or criminal arrest and prosecution. Proceedings under this Student Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.
 3. When a student is charged by federal, state, or local authorities with a violation of law, the University shall not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also the subject of a proceeding before a student conduct body under this Student Code, however, the University may advise off-campus authorities of the existence of this Student Code and of how such matters shall be handled internally within the University community. The University shall cooperate fully with law enforcement or other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators. Individual students and faculty members, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.
 4. When the Vice President for Student Affairs, or designee, receives a report of student misconduct that may constitute a felony offense under state or federal law, that official shall report the known facts and circumstances to law enforcement officials who have jurisdiction over the matter.

b. Conduct Policies and Procedures

i. Allegations and Hearings

1. Written allegations of misconduct may be filed against any student by any member of the University community. Allegations shall be directed to the student conduct officer responsible for the administration of the University conduct system. The complaint shall state the specific facts that form the basis for the allegation, as well as the identities of any other witnesses and the location of any physical evidence of the misconduct. Allegations must be signed or electronically submitted by the complainant. Any allegation should be submitted as soon as possible after the event takes place or after the complainant discovers the identity of the alleged perpetrator.
2. In cases in which a faculty member raises allegations of academic misconduct, the written allegation shall contain specific details of the alleged violation and include a recommendation in regard to conduct sanctions. University Policy 2:4 and SDBOR Policy 3:4 shall be referred to regarding the processing of such an allegation.
3. Allegations arising under the human relations policy shall be handled as provided in University Policy 4:6 and SDBOR Policy 1:18 and under the direction of the University Title IX/EEO Coordinator. In particular, though without limitation, student complainants and accuseds shall have the rights provided under SDBOR Policy 1:18(7) to trained investigators and hearing officers and to challenge the bias or conflict of interest of investigators or hearing officers, and they shall have the rights provided under SDBOR Policy 1:18(10), in the case of complainants to request confidentiality or forbearance, and with respect to complainants and accuseds to receive information relating to the conduct proceedings and outcomes.
 - a. Title IX/EEO Coordinator contact information shall be maintained and made available in, and disseminated to the University community and general public by, the University Title IX/EEO Coordinator Office located in the University Office of Human Resources, or successor unit.
4. The student conduct officer shall make an initial determination whether the allegations were timely brought, taking into account the seriousness of the incident and the degree to which delay may have impaired access to evidence. The student conduct officer shall determine if the allegations have merit, including, as to off-campus conduct, whether the incident sufficiently affects University interest to warrant further proceedings.
5. If the student conduct officer determines that the allegations have merit, the officer shall next determine whether they can be disposed of by mutual consent of the parties involved on a basis acceptable to the student conduct officer or by waiver of formal hearing where the student charged admits to the misconduct and accepts the proposed punishment.

- a. Informal disposition shall be final and there shall be no subsequent proceedings. If the allegations cannot be disposed of informally, the student conduct officer may later serve in the same matter as the student conduct body or a member thereof.
6. Within fifteen (15) working days of the filed complaint, the student conduct officer shall present all allegations to the student charged in written form and shall identify with specificity each section of this conduct code under which allegations are brought, the fact allegations that support the allegations, and those persons whose testimony shall be used to establish the allegations. A time shall be set for a hearing, not less than five nor more than fifteen (15) calendar days after the student has been notified. The minimum time limits may be waived by the party charged. Maximum time limits for scheduling of hearings may be extended at the discretion of the student conduct officer.
7. Hearings shall be conducted by a student conduct body or student conduct officer according to the following guidelines:
 - a. Hearings shall be conducted in private.
 - b. The chair of the student conduct body or the student conduct officer shall have the power to exclude from the hearing any person whose conduct interferes with the hearing.
 - c. A student conduct body will comprised only of three to five full-time University employees.
 - i. The complainant and respondent have the opportunity to challenge a member of the conduct body. Removal of a conduct body member will not affect the ability of the proceeding to continue.
 - ii. For cases alleging violation of any policy related directly or indirectly to Title IX, the conduct body will be comprised of employees who have received appropriate training on Title IX and related provisions.
 - d. In hearings involving more than one accused student, the student conduct body or student conduct officer may permit the hearings concerning each student to be conducted separately or jointly.
 - i. In hearings involving an alleged aggressor and alleged victim, the student conduct body and student conduct officer may structure the hearing such that the parties are not concurrently in the same room. This includes, but is not limited to, the use of technology or moving of participants to achieve this goal.

- e. 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 one advisor for each student shall be permitted. The advisor may be a faculty member, staff member, student, attorney, or family member. The complainant and the respondent are responsible for presenting their own cases, and, therefore, advisors are not permitted to speak or to participate directly in any hearing before a body or student conduct officer, except that the Vice President for Student Affairs, or designee, shall assume that responsibility under University Policy 4:6 and SDBOR Policy 1:18 for the presentation of evidence in matters involving discrimination complaints against students.
- f. The complainant, the respondent, and the student conduct body shall have the privilege of presenting witnesses, subject to the right of questioning as the conduct body deems appropriate pursuant to applicable law. Witnesses may only be present during the hearing while testifying.
- g. Pertinent records, exhibits, and written statements may be accepted as evidence for consideration by a student conduct body or conduct officer at the discretion of the chairperson or the student conduct officer.
- h. All procedural questions are subject to the final decision of the chairperson of the student conduct body or the student conduct officer.
- i. At the hearing, the student conduct body or student conduct officer shall determine (by majority vote if the student conduct body consists of more than one person) whether the student has violated each section of the Student Code which the student is charged with violating.
- j. The student conduct body's or student conduct officer's determination shall be made on the basis of whether it is more likely than not that the accused student violated the Student Code.
- k. The fact that a student acted while under the influence of alcohol, marijuana, or an illegal controlled substance shall not be considered a mitigating factor.
- l. Intoxication may be considered an aggravating factor, and it shall be so considered where the student has a history of prior violations of alcohol, marijuana, or controlled substance regulations.
- m. The student conduct body shall prepare written findings to support its determination. These shall include:

- i. Concise statements of each factual finding.
 - ii. Brief explanations of whether the factual findings justify a conclusion that the conduct violated this code;
 - 1. These must address each factual element that must be satisfied to establish that conduct has violated this code.
 - iii. Recommendations concerning appropriate sanctions;
 - 1. These must explain why the sanctions recommended are appropriate in view of the seriousness of the conduct and in consideration of the need to assure that the violation shall not recur.
- n. If a student conduct body prepares recommended sanctions, these shall be forwarded, together with the other findings and conclusions, to the student conduct officer who may adopt or reject the recommended sanctions.
- i. If the findings, conclusions, or recommended sanctions are rejected, the student conduct officer shall impose appropriate sanctions, or take such other action as deemed necessary, and provide the student conduct body with a written explanation for this action.
 - ii. The student conduct officer shall determine the effective date of any sanctions imposed.
- o. The approved written findings and conclusions and sanctions, if any, shall be provided to a complainant entitled to receive such information under Section 3(b)(ii) (Sanctions), below, and to the respondent.
- p. There shall be a single verbatim record of all formal evidentiary hearings before a student conduct body. The record shall be the property of the University.
- i. The record and its contents shall be held in confidence and may be used solely for purposes of appeal. Any person who unnecessarily discloses the contents of the record to parties not involved in the appeal shall be subject to conduct sanction.
 - ii. In the event of an appeal, the respondent shall be given access to the record for purposes of preparing

the appeal. Access shall be provided at such places and times as the Vice President for Student Affairs, or designee, may direct.

- iii. Except as required by the Americans with Disabilities Act, the University shall not be required to change the form in which the record is maintained.
- q. No student may be found to have violated this Student Code solely because the student failed to appear before a student conduct body, unless the student has allegedly failed to obey the direction of a duly empowered student conduct body, student conduct officer, or other University officer to appear. In all cases, the evidence in support of the allegations shall be presented and considered.

ii. Sanctions

In each case in which a student conduct body determines that a student has violated the University Student Code, the sanction(s) shall be determined and imposed by the student conduct officer. Where a violation of University or SDBOR Policy is established, and where a sanction is mandated under University or SDBOR Policy, that sanction shall be imposed. In cases in which persons other than or in addition to the student conduct officer have been authorized to serve as the student conduct body, the recommendation of all members of the student conduct body shall be considered by the student conduct officer. The student conduct officer is not limited to sanctions recommended by members of the student conduct body. Following the hearing, the student conduct body and the student conduct officer shall provide the accused in writing of the findings of fact, conclusions and recommendations, if any, reached by the student conduct body or student conduct officer and of the sanction(s) imposed, if any.

1. Complainants shall be informed of any sanctions imposed in the following circumstances:
 - a. When the sanction involves remedial action that directly relates to the complainant (for example, an order requiring the student harasser not to have contact with the complainant);
 - b. Where the allegations against the accused would constitute a crime of violence, as defined herein, and committed a violation of the University's rules or policies with respect to that crime.
2. The University may disclose the final results of a conduct proceeding when, at its discretion, it concludes that disclosure will serve a legitimate educational interest and determine through a conduct proceeding conducted under this Student Code that the alleged student perpetrator committed a crime of violence or a non-forcible sexual offense that is a violation of the University's rules or policies with respect to such crime or offense. For purposes of this subsection, "final results" means the

name of the student perpetrator, the violation committed, and any sanction imposed by the university on that student. Names of other students involved in the violation, such as a victim or witness, will be released only with the written consent of that other student or students.

3. The University may inform the parents or legal guardians of students under twenty-one years of age that the students have violated University or SDBOR policies concerning the use or possession of alcohol or controlled substances as follows:
 - a. When the infraction occurs under circumstances that suggest that the student suffers from a serious substance abuse problem or shows little regard for his or her own health or safety or that of others. Examples include high blood alcohol content (BAC) or medical transport required.
 - b. When the student is found to have committed a second violation.
 - c. The procedure for parental notification, absent an emergency determination, is as follows:
 - i. The student will be sent a letter seven calendar days prior to the letter being sent to the student's parent(s) or guardian(s).
 - ii. The student's parent(s) or guardian(s) will be sent the letter via traditional mail service according to the emergency contact information on record at the University.
4. The following sanctions may be imposed upon any student found to have violated this Student Code:
 - a. Warning – A conduct notice in writing to the student that the student is violating or has violated University regulations.
 - b. Censure – A written censure for violation of specified regulations.
 - c. Probation – Probation is for a designated period of time and includes the probability of more severe conduct sanctions if the student is found to be violating any University regulation(s) during the probationary period.
 - d. Loss of Privileges – Denial of specified privileges for a designated period of time.
 - e. Fines – monetary fines may be imposed as follows:

- i. Failure to complete assigned sanctions and conditions may result in a fine of \$100.00.
 - ii. Violation of any alcohol, marijuana, or other controlled substance policy may result in a fine of up to \$200.00 or as determined by SDBOR policy.
 - iii. Assessed fines are separate from any costs to the student associated with attending required alcohol or other drug education presentations.
 - iv. Fines may be assessed for violations of the Student Code as stated in this policy or as stated in other SDBOR or University policies directly relating to student conduct.
- f. Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service or monetary or material replacement.
- g. Discretionary Sanction – work assignments, service to the University, or other related discretionary assignments.
- h. Residence Suspension – Separation of the student from residence facilities for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- i. Residence Expulsion – Permanent separation of the student from residence facilities.
- j. Suspension – Separation of the student from the University for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. A student who has been suspended from one SDBOR institution may not be enrolled at another.
- k. Expulsion – Mandatory separation of the student from the University for a period of no less than six years. A student who has been expelled from one SDBOR institution may not be enrolled at another until the period of expulsion has expired.
- l. The privileges of continued participation in University activities, access to University facilities or residences may be conditioned upon participation in or completion of counseling, substance abuse, or comparable programs, at the student's expense.
- m. More than one of the sanctions listed above may be imposed for any single violation.
- n. Imposition of a sanction may be delayed, suspended, or held in abeyance on such conditions as the student conduct officer may

prescribe.

5. The following sanctions are mandated for violation of University or SDBOR policies:
 - a. Conduct sanction for acts of aggression, sex offenses, or harassment shall be subject to the following conditions:
 - i. Conduct sanction on the first occasion may include expulsion, where appropriate, given the nature of the act of aggression, sex offense, or harassment;
 - ii. If there is a second occurrence of an infraction of the same nature at any time during the student's career in South Dakota public higher education, expulsion shall be mandatory.
 - b. Persons who make bomb threats or who aid or abet their making shall be expelled. Additionally, they shall be required to pay restitution to the University for all direct and indirect expenses incurred as a result of the threat or threats.
 - c. Conduct sanctions for infractions of alcohol, marijuana, and controlled substances regulations:
 - i. Conduct sanction for the initial infraction shall be determined under local regulations which may provide for mandatory substance abuse assessment.
 - ii. If, at any time during their enrollment within the University or any other SDBOR institution, students commit a second offense under the alcohol, marijuana, and controlled substances policy, they shall be fined \$100.00 and placed on conduct probation.
 - iii. If, at any time during their enrollment within the University or any other SDBOR institution, students commit a third alcohol, marijuana or controlled substances offense, they shall either be suspended for one semester or, in compelling circumstances, be permitted to continue attendance subject to conduct probation while participating in an approved substance abuse treatment program at their own expense.
 - iv. The foregoing sanctions, together with such actions as may be imposed pursuant to local regulations for initial infractions, are minimum sanctions. The reference to them does not preclude the University from imposing more severe sanctions at any level, including expulsion, where the facts and circumstances of the infraction

warrant such action.

- v. Where an infraction of University or SDBOR alcohol, marijuana, or controlled substances policies appears also to constitute a criminal offense under South Dakota or federal law, the University may refer the matter to law enforcement authorities. Where the facts suggest a felony offense, such referral shall be mandatory. Referral of a matter to law enforcement authorities shall not require suspension of conduct proceedings nor delay imposition of discipline.
- d. The following sanctions may be imposed upon groups or organizations:
- i. Those sanctions listed above in Section 3(b)(ii)(4) (a)-(g) and (l)-(n).
 - ii. Loss of all privileges, including University recognition, for a specified period of time.
 - iii. When an officially recognized student organization has violated any of the conditions of the recognition established under the alcohol, marijuana, and controlled substances policy, it shall be sanctioned as follows:
 - 1. On the first offense the organization shall be required to forego the use of alcohol at any of its functions, to remove all alcohol from the residence or both for one calendar year from the date on which this conduct sanction is imposed. Additionally, the organization may lose the right to conduct social functions for a like period of time or, at the discretion of local officials, may incur additional sanctions including the loss of recognition.
 - 2. A second offense within four years against any of the conditions of recognition or a violation of a sanction imposed following a first infraction shall result in the suspension of the privilege to solicit and to accept new members for one calendar year from the time the sanction is imposed and may result in the loss of recognition.
 - 3. A third offense shall result in the loss of recognition.

iii. Interim Suspension

In certain circumstances, the Vice President for Student Affairs, or designee, may impose a University or residence suspension prior to the hearing before a student conduct body.

1. Interim suspension may be imposed only for one or more of the following purposes:
 - a. To ensure the safety and well-being of members of the University community or preservation of University property or other property located on premises controlled by the University;
 - b. To ensure a student's own physical or emotional safety and well-being; or
 - c. To ensure the normal operations of the University where a student poses a definite threat of disruption of or interference with the normal operations of the University.
 2. During the interim suspension, students shall be denied access to residence facilities or to the campus (including classes) or all other University activities or privileges, in any combination or all together, for which the student might otherwise be eligible, as the Vice President for Student Affairs, or designee, or the student conduct officer may determine to be appropriate.
 3. Except in circumstances presenting an immediate threat to the safety and well-being of members of the University community, including the affected student, or in circumstances presenting an immediate threat of serious damage to University property or other property located on premises controlled by the University, interim suspension may not be imposed until the student is afforded a reasonable opportunity to meet informally with the Vice President for Student Affairs, or designee, to learn the basis for the action and to raise any objections or to request leniency. The student should be notified beforehand of the purpose of the meeting. A student who fails to respond to the notice shall be deemed to have waived the right to such a meeting.
- iv. Conduct sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's confidential record. Sanctions that would be considered in the course of administering progressive conduct sanctions under Section 3(b)(ii) (2) above shall be disclosed to another institution under the control of the SDBOR if a student transfers to that institution or is required to appear there to respond to conduct allegations. Upon graduation, the student's confidential record may be expunged of conduct actions other than residence expulsion, institutional suspension or institutional expulsion. Cases involving the imposition of sanctions other than residence expulsion, institutional suspension or institutional expulsion shall be expunged from the student's confidential record six years after final disposition of the case or such other time as the student conduct officer may prescribe at the time of the expulsion. Where

restitution is required of a student, the University reserves the right to disclose all material portions of the confidential file as may be necessary to obtain a judgment in a court of competent jurisdiction. Such files as relate to matters involving restitutionary sanctions shall be preserved at least until all necessary sums have been paid.

- v. Students enrolled with the University or in any other SDBOR institution shall be held accountable for their conduct while visiting other SDBOR institutions. Students may be required, as a condition of continued enrollment, to report at their own expense to another campus to appear before a conduct hearing and to answer allegations based on their conduct while at that campus.
 - 1. Any conduct sanction imposed in response to campus or SDBOR regulations shall be given systemwide effect. A student suspended at one institution shall not be able to enroll in the meantime at another. A student who has been expelled from one SDBOR institution may not be enrolled at another.
 - 2. When a student is brought forward on conduct allegations by an institution, sanction shall be determined under local standards. This punishment/sanction may, at the discretion of local authorities and pursuant to local procedural regulations, include sanctions more severe than the minimum sanctions set forth in systemwide policy; except that no discretionary recommendation for suspension or expulsion may be imposed without the concurrence of the senior student affairs officer from the student's home campus.

vi. Appeals

- 1. A decision reached by the student conduct body or a sanction imposed by the student conduct officer pursuant to this policy may be appealed by accused students or complainants entitled to receive information concerning conduct sanctions under Section 3(b)(ii) above, to an appellate board of the University within five (5) week days, exclusive of holidays, after notice of the decision is sent. Such appeals shall be in writing and shall be delivered to the student conduct officer or designee.
- 2. Except as required to explain the basis of new evidence, an appeal shall be limited to review of the verbatim record of the initial hearing and supporting documents for one or more of the following purposes:
 - a. To determine whether the original hearing was conducted fairly in light of the allegations and evidence presented, and in conformity with prescribed procedures;
 - b. To determine whether the facts in the case were sufficient to establish that violation(s) of this Student Code occurred;
 - c. To determine whether the sanction(s) imposed were appropriate for the violation of the Student Code which the student was

found to have committed.

3. An appeal may request consideration of new evidence, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, where such evidence or facts were not known to the person appealing at the time of the original hearing.
4. If an appeal is upheld by the appellate board, the matter shall be remanded to the original student conduct body and student conduct officer for re-opening of the hearing to allow reconsideration of the original determination and/or sanction(s).
5. In cases involving appeals by students accused of violating this Student Code, review of the sanction by the appellate board may not result in more severe sanction(s) for the accused student. Instead, following an appeal, the Vice President for Student Affairs, or designee, may, upon review of the case, reduce, but not increase, the sanction(s) imposed by the student conduct officer.
6. Where complainants entitled to receive information concerning conduct sanctions under Section 3(b)(ii) above appeal from the decision, the Vice President for Student Affairs, or designee, may, upon review of the case, reduce or increase the sanction(s) imposed by the student conduct officer or remand the case to the original student conduct body and student conduct officer.
7. The sequence of University officials through which an appeal for a sanction of Warning or Censure shall be directed is in the following order: Assistant Director for Student Conduct, Assistant Director of Residential Life, Director of Residential Life.
 - a. Appeals of decisions made by live-in residence hall staff members shall be directed to the Assistant Director for Student Conduct.
 - b. Appeals of decisions made administratively by the Assistant Director for Student Conduct shall be directed to the Assistant Director of Residential Life.
 - c. Appeals of decisions made by the Assistant Director of Residential Life shall be directed to the Director of Residential Life.

The official considering the appeal has the discretion to refer it to a higher level which the official deems appropriate.

8. The sequence of University officials through which an appeal for a sanction of Probation, Suspension, or Expulsion shall be directed is in the following order: Assistant Director for Student Conduct, Assistant Director of Residential Life, Director of Residential Life, Dean of Students or Student Conduct Committee, Associate Vice President for

Student Affairs, Vice President for Student Affairs, and the University President, or designee.

- a. Appeals of decisions made by live-in residence hall staff members shall be directed to the Assistant Director for Student Conduct.
- b. Appeals of decisions made administratively by the Assistant Director for Student Conduct or shall be directed to the Assistant Director of Residential Life.
- c. Appeals of decisions made by the Assistant Director of Residential Life shall be directed to the Director of Residential Life.
- d. Appeals of decisions made by the Director of Residential Life shall be directed to the Dean of Students.
- e. Appeals of decisions made by the Dean of Students or Student Conduct Committee shall be directed to the Associate Vice President for Student Affairs.
- f. Appeals of decisions made by the Associate Vice President for Student Affairs shall be directed to the Vice President for Student Affairs.
- g. Appeals of decisions made by the Vice President for Student Affairs shall be directed to the University President, or designee.
- h. Appeals of decisions made by the University President shall be directed to the SDBOR.

c. Administrative Review

As provided in SDBOR Policy 1:6(4), the SDBOR or University President may review a finding or a sanction of an official or body exercising the powers delegated through this policy.

- i. Except on the affirmative vote of two-thirds of the members of the SDBOR, a notice of review must be given to the complainant and respondent within ninety (90) calendar days of a final decision by the official or body exercising delegated authority.

d. Interpretation and Revision

- i. Any question of interpretation regarding this Student Code shall be referred to the Vice President for Student Affairs, or designee, for final determination.
- ii. This Student Code shall be reviewed at least every four years under the direction of the Vice President for Student Affairs, or designee, and student conduct

officer.

1. If the review leads to a recommendation that University or SDBOR policy be modified, that recommendation and its supporting rationale shall be provided to the University President and, if approved, forwarded to the SDBOR Executive Director.

4. Responsible Administrator

The Vice President for Student Affairs, or designee, is responsible for annual and ad hoc review of this policy. The University President is responsible for approval of modifications to this policy.

SOURCE: Approved by President on 08/01/2014.

Revised in accordance with SDBOR revisions; Approved by President on 09/29/2015.

¹ APPENDIX A TO SUBPART D OF PART 668--CRIME DEFINITIONS IN ACCORDANCE WITH THE FEDERAL BUREAU OF INVESTIGATION'S UNIFORM CRIME REPORTING PROGRAM

The following definitions are to be used for reporting the crimes listed in Sec. 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program. The definitions for murder, rape, robbery, aggravated assault, burglary, motor vehicle theft, weapons: carrying, possessing, etc., law violations, drug abuse violations, and liquor law violations are from the "Summary Reporting System (SRS) User Manual" from the FBI's UCR Program. The definitions of fondling, incest, and statutory rape are excerpted from the "National Incident-Based Reporting System (NIBRS) User Manual" from the FBI's UCR Program. The definitions of larceny-theft (except motor vehicle theft), simple assault, intimidation, and destruction/damage/vandalism of property are from the "Hate Crime Data Collection Guidelines and Training Manual" from the FBI's UCR Program.

Crime Definitions From the Summary Reporting System (SRS) User Manual From the FBI's UCR Program

Arson: Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide--Manslaughter by Negligence: The killing of another person through gross negligence.

Criminal Homicide--Murder and Nonnegligent Manslaughter: The willful (nonnegligent) killing of one human being by another.

Rape: 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.

Robbery: 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 and/or by putting the victim in fear.

Aggravated Assault: 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.)

Burglary: The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

Motor Vehicle Theft: The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned--including joyriding.)

Weapons: Carrying, Possessing, Etc.: The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Drug Abuse Violations: The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Liquor Law Violations: The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

Crime Definitions From the National Incident-Based Reporting System (NIBRS) User Manual from the FBI's UCR Program

Sex Offenses: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. Fondling--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.

B. Incest--Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

C. Statutory Rape--Sexual intercourse with a person who is under the statutory age of consent.

Crime Definitions From the Hate Crime Data Collection Guidelines and Training Manual From the FBI's UCR Program

Larceny-Theft (Except Motor Vehicle Theft): The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

Simple Assault: An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation: To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Destruction/Damage/Vandalism of Property: To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

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