


Policy 3:1 – Student Conduct Code

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Interim Policy

Policy Contact: Office of Student Affairs

1. Purpose

The University is committed to creating and maintaining a productive living-and-learning community that fosters the intellectual, personal, cultural, and ethical development of its Students. Self-discipline and respect for the rights and privileges of others are essential to the educational process and to good citizenship. The purpose of this policy is to educate Students about their civic and social responsibilities as members of the University community. The primary focus of the Student conduct process is on educational and corrective outcomes; however, conduct sanctions such as suspension or expulsion from a University may be necessary to uphold community standards and to protect the campus community. Extensive, organized, serious, or repeated violations of this policy are taken into account when determining conduct sanctions. This policy (hereinafter referred to as “Student Code”) implements and is governed by and subject to SDBOR Policy 3.4.1.

2. Definitions

- a. **Advisor:** a person of the Student's choosing who has agreed to advise a Student throughout the Student conduct process. The Advisor may be a Faculty Member, staff member, Student, attorney, family member, or anyone else. The Advisor is limited to advising the Student directly and is not permitted to speak to anyone else, or participate directly in any hearing. Students should choose an Advisor who is available to attend any scheduled meetings or hearings because Advisor availability is not considered in scheduling meetings or hearings.

- b. **Appellate Board:** any person or persons authorized by the University President to consider an appeal from the Chair's determination that a Respondent has or has not violated the Student Code or from the conduct sanctions imposed by the Student Conduct Officer.

- c. **Chair:** the Student Conduct Officer or the Senior Student Affairs Officer who:
 - i. Is a member of the Student Conduct Panel;
 - ii. Is responsible for proper operation of the hearing; and
 - iii. Has sole discretion to determine whether a Respondent has violated the Student Code, and if so, to impose appropriate sanctions.

- d. **Complainant:** an individual who was allegedly injured by an alleged violation of the Student Code by a Respondent.

- e. **Day:** includes Monday through Friday, except for holidays and other times when the University's administrative offices are closed.

- f. Faculty Member:** any person hired by the University to conduct classroom or other academic activities.

- g. FERPA:** the Family Educational Rights and Privacy Act of 1974, as amended.

- h. Human Rights Violations:** refers to violence, harassment that is not sexual harassment as defined in University Policy 4:4, stalking, discrimination, and retaliation under this Student Code.

- i. University Official:** any person employed by the University, performing assigned administrative or professional responsibilities.

- j. University Premises:** all land, buildings, facilities, and other property in the possession of, or owned, used, or controlled by the University, including adjacent streets and sidewalks.

- k. Member of the University Community:** any person who is a Student, Faculty Member, University Official, any person employed by the University, a volunteer, or guest. A person's status in a particular situation shall be determined by the Senior Student Affairs Officer.

- l. Notice:** as required by this Student Code, notice shall be provided in writing via email to the Student's official University email account. Notice is deemed received the day after it is sent by email.

- m. Organization:** any Student group that has been granted University registration or recognition.

- n. Policy:** the written regulations of the SDBOR or University as found in, but not limited to, this Student Code, the Residence Life Handbook, the Graduate and Undergraduate Catalogs, and other

official publications.

- o. Reasonable Person:** an individual under similar circumstances and with similar identities as the Complainant.
- p. Respondent:** a Student or Organization that is alleged to have violated the Student Code.
- q. Senior Student Affairs Officer:** the University Official exercising primary authority over University Student affairs programs and operations, or designee.

 - i.** The title of this role at the University is “Vice President for Student Affairs and Enrollment Management” and will be used interchangeably throughout the Student Code with “Senior Student Affairs Officer.”
- r. Student:** all persons taking courses from the University, both full-time and part-time, enrolled in undergraduate, graduate, professional, or special topic courses, whether credit-bearing or not.
- s. Student Conduct Panel:** the panel that hears formal hearings.

 - i.** This panel can take the following forms:

 - A.** Option 1: only the Student Conduct Officer; or
 - B.** Option 2: the Student Conduct Officer and any University employee or employees or independent contractor authorized by the Senior Student Affairs Officer to determine whether a Student has violated the Student Code and to recommend imposition of conduct sanctions.
 - ii.** For matters involving allegations of academic misconduct, the Student Conduct Panel must include at least one Faculty

Member or academic administrator appointed by the Provost in the form described in Option 2 above.

- t. **Student Conduct Officer:** any University Official authorized by the Vice President for Student Affairs and Enrollment Management, or successor, to:
 - i. Informally resolve an allegation by determining the facts and, if a violation is found, imposing a conduct sanction without the assistance of a Student Conduct Panel; or
 - ii. Serve as Chair of the Student Conduct Panel, receive and consider the findings and recommendations of a Student Conduct Panel, and determine whether a Respondent has violated the Student Code, and if so, to impose appropriate sanctions.

3. Policy

a. Standards of Behavior

- i. Attendance at the University is optional and voluntary. When Students enroll at the University, they voluntarily accept obligations of performance and behavior that are consistent with the University's lawful mission, processes, and functions. In general, these obligations are considered much higher than the obligations imposed by civil and criminal law for all citizens.
- ii. By enrolling at the University, Students voluntarily accept responsibility for compliance with all SDBOR and University Policies, including but not limited to this Student Code.

b. Authority of the University over its Students and Organizations

- i. Student conduct proceedings may be initiated in response to conduct prohibited by the Student Code:

- A. That occurs on University Premises;
 - B. That occurs at events officially sponsored by the University;
 - C. That arises out of membership in the University community; or
 - D. That occurs elsewhere and that adversely affects the University, any Organizations, members of the University community, or the pursuit of their lawful objectives.
- ii. Notwithstanding this Student Code, the University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community. The University also reserves the right to extend any deadline contained in this Student Code for good cause with written notice to the parties of the delay and the reason for the delay.
- iii. For purposes of the Student Code, the default authority over the Student for Student conduct purposes will be determined in accordance with SDBOR Policy 3.4.1.
- iv. For instances where multiple institutions within the SDBOR system have a reasonable claim to authority over the Student for Student conduct purposes, the Senior Student Affairs Officer at the institutions with a reasonable claim to authority shall determine the appropriate institution to proceed with the Student conduct process. The decision should consider the location of the alleged incident, Complainant, Respondent, witnesses, and the practicality of conducting the Student conduct process at the different universities having a reasonable claim to authority. If the Senior Student Affairs Officers cannot agree, the SDBOR Director of Student Affairs will make a final decision.
- v. Where Students are also employees, they may be subject to concurrent authority. Student conduct proceedings under this Student Code may be initiated irrespective of any action taken by the University as an employer. However, when the Student

employee has been subject to conduct proceedings as an employee, the findings that resulted from such proceedings will be considered in the Student conduct process as long as the standard used in such proceedings was preponderance of the evidence or higher.

c. Alcohol Amnesty

- i. This section aims to remove the barriers that may prevent any Student from seeking emergency medical attention by providing an opportunity for the University to intervene in a caring and non-punitive manner. The goal is to reduce the potential risk of alcohol-related injuries or deaths, and increase the likelihood that Students will seek medical attention in crisis situations.
- ii. A Student who seeks emergency medical attention (or who has emergency medical attention sought on their behalf) for alcohol-related consumption will not be sanctioned for violating alcohol consumption prohibitions found in the Student Code related to that incident, as long as the Student completes the following requirements:
 - A. Participates in an initial meeting with the Senior Student Affairs Officer, or designee; and
 - B. Completes all recommendations from the Senior Student Affairs Officer, or designee; and
 - C. Submits proof of completion of all recommendations within the time frame designated by the Senior Student Affairs Officer, or designee, at the initial meeting.
- iii. A bystander Student who has engaged in alcohol consumption and who seeks emergency medical attention for someone else, or tries to actively engage in assistance for someone else for that person's alcohol-related consumption will not be sanctioned for violating alcohol consumption prohibitions found

in the Student Code related to their own consumption but will be invited to meet with the Senior Student Affairs Officer, or designee.

- iv.** The University will not pursue any disciplinary action related to any alcohol or drug consumption against any Student who has been sexually assaulted or sexually harassed, for their use of alcohol at the time of the sexual assault or sexual harassment.
 - v.** 3.c.ii. and 3.c.iii. of this section will only apply to a Student who seeks emergency medical attention before police or University employees or agents take any official action or intervention related to the alcohol consumption.
 - vi.** Alcohol amnesty does not preclude disciplinary action regarding other violations of the Student Code.
 - vii.** Alcohol amnesty only applies to the University's Student conduct process. It does not apply to any criminal, civil, or other legal consequence for violations under federal, state, or local law.
 - viii.** Alcohol amnesty is not designed to protect or shield those Students who repeatedly violate the Student Code. The Senior Student Affairs Officer, or designee, may assess each situation on a case-by-case basis, denying the safeguards of alcohol amnesty if serious or repeated incidents prompt a higher degree of concern or response, which may include disciplinary action under this Student Code.
- d.** Relationship between the Student Conduct Process and the Criminal Law Process
- i.** The Student conduct process is independent of any criminal or civil process. Therefore, a Student alleged to have engaged in conduct that would be a violation of this Student Code (whether such conduct could also be a violation of criminal or civil law)

may face Student disciplinary action, regardless of any criminal or civil process or their outcomes.

- ii. When the alleged misconduct includes allegations of Human Rights Violations, the disciplinary process will not be delayed except when law enforcement requests a delay to conduct the fact-finding portion of its investigation.
- iii. Determinations made or conduct sanctions imposed under this Student Code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of this Student Code were dismissed, reduced, or resolved in favor of, or against, the criminal law defendant.
- iv. When a Student is charged by federal, state, or local authorities with a violation of law, the University will not request or agree to special consideration for that Student because of his or her status as a Student.
- v. If the alleged violation of law also gives rise to Student disciplinary action under this Student Code, the University may advise off-campus authorities of the existence of the Student Code and of how such matters are typically handled under the Student Code.
- vi. The University will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law and in the conditions imposed by criminal courts for the rehabilitation of Student violators, provided that the conditions do not conflict with any conduct sanctions imposed as a result of the Student conduct process, this Student Code, or University Policies.
- vii. Where the Student has been found guilty in a court of law or has declined to contest such charges, although not actually admitting guilt (e.g. “no contest” or “nolo contendere”), the alleged facts that formed the basis of the criminal charges shall be deemed established for purposes of any Student conduct process.

viii. Individual Students and other members of the University community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

ix. When an employee of the University knows that a felony was committed and that knowledge is not privileged, such employee shall report the known facts and circumstances to law enforcement officials who have jurisdiction over the matter.

e. Interpretation and Revision

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

ii. The University must ensure that its interests do not interfere with the impartiality of the Student conduct process.

iii. Any question of interpretation regarding the Student Code shall be referred to the Senior Student Affairs Officer, or designee, for final determination.

iv. The Student Code should be reviewed periodically under the direction of the Senior Student Affairs Officer, or designee.

f. Prohibited Conduct

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

ii. Acts of Academic Misconduct or Dishonesty

Honesty and integrity are core values at the University. Faculty Members and Students are jointly responsible for maintaining academic standards and integrity in University courses. In addition to any conduct sanctions imposed under this Student Code, academic consequences for academic misconduct may be imposed by the Faculty Member, including issuing a failing grade in the course. Any grade issued by the Faculty Member, whether as a result of academic misconduct or not, constitutes an academic evaluation and is not a conduct sanction imposed under this Student Code. All Faculty Members should report incidents of academic misconduct to the Student Conduct Officer in accordance with University Policy 2:4.

A. [3.f.ii.1.] Engaging in acts of academic misconduct, which means cheating or plagiarism.

I. [3.f.ii.1.a.] Cheating includes, but is not limited to the following:

- I. Using any unauthorized assistance in, or having unauthorized materials while taking quizzes, tests, examinations or other assignments, including copying from another's quiz, test, examination, or other assignment or allowing another to copy from one's own quiz, test, examination, or other assignment;
- II. Using sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments;
- III. Acquiring, without permission, tests or other academic material belonging to the instructor or another member of the University faculty or staff;

E. [3.f.ii.5.] Tampering with the election of any Organization.

F. [3.f.ii.6.] Claiming to represent, or act on behalf of, the University when not authorized to do so.

iii. Disruption, Obstruction, or Interference with University or Personal Activities

A. [3.f.iii.1.] Disrupting or obstructing University or personal activities.

B. [3.f.iii.2.] Classroom disruption, which is behavior that a Reasonable Person would view as significantly or repeatedly interfering with the instructor's ability to teach the class or the ability of other Students to benefit from the instructional program.

C. [3.f.iii.3.] Failure to comply with directions of University, law enforcement, fire department, public safety contractors, or other government officials acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

D. [3.f.iii.4.] Obstruction of the free flow of pedestrian or vehicular traffic.

E. [3.f.iii.5.] Abuse of the Student conduct process, which includes, but is not limited to any of the following:

I. Falsifying, distorting, or misrepresenting information provided;

II. Making false allegations;

III. Attempting to discourage an individual's proper participation in, or use of, the Student conduct process;

IV. Harassment (verbal or physical) or intimidation of any person participating in the Student conduct process;

V. Failure to comply with any conduct sanctions imposed pursuant to the Student Code.

F. [3.f.iii.6.] Exhibiting disorderly conduct, such as disrupting a residence hall community or impeding upon the ability of an individual to benefit from the University experience.

iv. Misuse of University Resources or Property, Personal Property, or Personal Property of Others

A. [3.f.iv.1.] Tampering with fire and life safety equipment including, without limitation, fire alarms, sprinkler systems, first aid equipment, and laboratory safety apparatus.

B. [3.f.iv.2.] Unauthorized taking of, damage to, or possession of property belonging to the University, another Member of the University Community, or another person by any means, including arson.

C. [3.f.iv.3.] Unauthorized possession, duplication, or use of keys, access cards, or access codes to any University Premises.

D. [3.f.iv.4.] Unauthorized entry into, or use of, University Premises.

E. [3.f.iv.5.] Unauthorized possession, entry into, or use of University equipment, software systems, or information.

F. [3.f.iv.6.] Possession of unauthorized weapons, chemicals, or explosives.

I. Weapons including, but not limited to, firearms, stun guns, Tasers, BB guns, switchblade knives, fixed-blade knives with a blade length of five (5) inches or greater, or any item that is designed or used to injure or harm another person except as explicitly permitted by SDBOR or University Policy.

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

- A. [3.f.v.1.]** Violence, which includes, but is not limited to using or threatening to use physical force on or toward another person without that person's permission, except in reasonable self-defense. The use of physical force includes both using one's own body parts as well as using other items. Violence also includes actions that put another person in reasonable fear that the actor intends to use physical force.
- B. [3.f.v.2.]** Brandishing, pointing, or using a knife, gun, or other weapon toward another person, except in reasonable self-defense.
- C. [3.f.v.3.]** Restraining or transporting another person without that person's permission.
- D. [3.f.v.4.]** Making bomb threats.
- E. [3.f.v.5.]** Harassment, as set forth in University Policy 4:6, which includes, but is not limited to the following:
 - I.** Conduct toward another person that is severe and pervasive and objectively offensive that it effectively denies the individual's ability to participate in or to realize the intended benefits of a University activity or resource.
- F. [3.f.v.6.]** Sexual harassment, as set forth in University Policy 4:4, which is conduct on the basis of sex that satisfies one or more of the following:
 - I.** An employee of the institution conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
 - II.** Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively

offensive that it effectively denies a person equal access to the institution's education program or activity; or

III. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA), the definitions of which are set forth in SDBOR Policy 1.4.2.

G. [3.f.v.7.] Stalking, as set forth in University Policy 4:5, which includes engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.

I. "Course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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

H. [3.f.v.8.] Hazing, which includes any intentional, knowing, or reckless act committed by an individual (whether individually or in concert with others) against a Student or Students, regardless of the willingness of such Student(s) to participate, that-

I. Is committed in the course of an initiation into, an affiliation with, or the maintenance of membership in, an Organization; and

II. Causes or creates a risk above the reasonable risk encountered in the course of participation in the

University or the Organization (such as the physical preparation necessary for participation in an athletic team), of physical or psychological injury, including:

- I. whipping, beating, striking, electronic shocking, placing of a harmful substance on someone's body, or similar activity;
 - II. causing, coercing, or otherwise inducing sleep deprivation, exposure to the elements, confinement in a small space, extreme calisthenics, or other similar activity;
 - III. causing, coercing, or otherwise inducing another individual to consume food, liquid, alcohol, drugs, or other substances;
 - IV. causing, coercing, or otherwise inducing another individual to perform sexual acts;
 - V. any activity that places another individual in reasonable fear of bodily harm through the use of threatening words or conduct;
 - VI. any activity against another individual that includes a University policy violation or a criminal violation of local, state, tribal, or federal law; and
 - VII. any activity that induces, causes, or requires another individual to perform a duty or task that involves a SDBOR or University policy violation or a criminal violation of local, state, tribal, or federal law.
- III. The express or implied permission of the individual being hazed does not make the behavior acceptable.
- I. [3.f.v.10.] Voyeurism, which includes, but is not limited to, any use of electronic or other devices to make an audio, video, or photographic record of another person without

that person's prior knowledge and without that person's prior authorization when such a recording is likely to cause that person or a Reasonable Person injury or distress, or involves that person's intimate parts or sexual conduct involving that person.

J. [3.f.v.11.] Invasion of privacy, which occurs when:

- I.** An individual views another person, without that person's prior knowledge and permission, under circumstances in which the other person has a reasonable expectation of privacy; or
- II.** An individual uses an audio or video device to record another person, without that person's prior knowledge and permission, under circumstances in which the other person has a reasonable expectation of privacy.
- III.** In accordance with South Dakota law, no person may use or disseminate in any form any visual recording or photographic device to photograph or visually record any other person without clothing or under or through the clothing, or with another person depicted in a sexual manner, 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, with the intent to self-gratify, to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. Additionally, those who disseminate such material without the person's knowledge or consent, or create an unduly embarrassing, intimidating or hostile environment for the person depicted in an image, video or audio recording shall be subject to discipline.

vi. Discrimination and Retaliation

- A. [3.f.vi.1.] Discrimination, as set forth in University Policy 4:3, which involves excluding from, or treating another person differently than others in, University activities on the basis of sex, race, color, creed, religion, national origin, ancestry, gender, gender identity, transgender, sexual orientation, age, disability, genetic information, or veteran status. However, social fraternities and sororities that are exempt from taxation under federal law may maintain single-sex membership practices without violating antidiscrimination policies, as recognized by 20 U.S.C. 1681(a)(6), and the enforcement of such single-sex membership practices by Students does not violate this provision.
- B. [3.f.vi.2.] Retaliation, as set forth in University Policy 4:3, which includes conduct that would make a Reasonable Person feel intimidated, or that interferes with, threatens, coerces, or otherwise discriminates against any individual because that individual reports or files a complaint alleging a violation of law, SDBOR, or University Policy, or participates in any process in which the individual has a right to participate.

vii. Housing and Living Groups

- A. [3.f.vii.1.] Violations of any rules imposed by University housing or living groups are also violations of this Student Code.

viii. Use and Misuse of Substances

- A. [3.f.viii.1.] The unauthorized manufacture, sale, possession, use, or consumption of the following by Students:
 - I. [3.f.viii.1.a.] Alcohol;
 - II. [3.f.viii.1.b.] Marijuana (including cannabis used or possessed for medical purposes); or
 - III. [3.f.viii.1.c.] Controlled substances.

- B.** However, possession, use, or distribution of alcohol, marijuana, or controlled substances is permitted on University Premises when:
- I.** Needed in conjunction with approved research activities;
 - II.** Alcohol is possessed, used, or distributed in a lawful manner inside a designated residence hall facility occupied exclusively by upper-division and/or non-traditional Students who are at least twenty-one (21) years of age;
 - III.** Alcohol is possessed, used, or distributed in a lawful manner on University Premises that have been designated by the University President as places where such possession, use, and distribution may be permitted, subject to such conditions as the University President may also prescribe, provided that a notice of such designation and conditions have been filed previously with the executive director of the SDBOR;
 - IV.** The possession, use, or distribution of the controlled substance is prescribed by a licensed health care professional authorized to prescribe such substances. For purposes of this section, a prescription does not include a written certification for use of medical marijuana, pursuant to SDCL 34-20G-1(23). Students who use medical marijuana pursuant to a validly issued written certification when not on property controlled by the University may subsequently report to class or participate in activities as long as such use does not cause impairment or disrupt academic or campus activities.
 - V.** Alcohol is possessed, used, or distributed in a manner that is expressly approved by a SDBOR or University Policy; or

- C.** [3.f.viii.3.] The unauthorized possession of any drug paraphernalia including, but not limited to, any equipment, materials, or products of any kind which are used, intended for use, designed for use, or have been used for the manufacture, distribution, use or storage of any controlled substance.

ix. Violation of Policy or Laws

- A.** [3.f.ix.1.] Violation of published SDBOR or University Policies, rules, or regulations.
- B.** [3.f.ix.2.] Violation of federal, state, or local law.

x. RESERVED

xi. Conduct by Organizations

- A.** Organizations that, formally or informally, through repeated practice, initiate, encourage, support, or tolerate conduct by members, associates, or invitees that violates the provisions of this Student Code shall be subject to conduct sanctions.
- B.** The privileges of official recognition by the University may be extended to Organizations, including those that maintain residences for their members, only if such Organizations agree to adopt and to enforce policies that, at minimum:
 - I.** Prohibit the manufacture, possession, use, dispensing, or provisions of alcoholic beverages at Organizational functions or in the Organizational residence by persons under the age of 21 (or the legal age of use and possession in the applicable jurisdiction);
 - II.** Prohibit the manufacture, possession, use, or dispensing of marijuana (including cannabis used or possessed for medical purposes) or unauthorized

controlled substances at Organizational functions or in the Organizational residence;

- III. Prohibit the expenditure of Organizational funds on alcoholic beverages, marijuana (including cannabis used or possessed for medical purposes), or controlled substances;
- IV. Prohibit the informal collection of monies from members, associates, or invitees to be spent on alcoholic beverages, marijuana (including cannabis used or possessed for medical purposes), or controlled substances;
- V. Prohibit possession, use, or distribution of alcohol, marijuana (including cannabis used or possessed for medical purposes), or controlled substances on University Premises, except as explicitly permitted by this Student Code;
- VI. Prohibit hazing as defined by this policy and promote strategies for group cohesion without hazing;
- VII. Establish conduct policies and sanctions regarding violations by individual members no less stringent than those set forth under SDBOR or University Policies, except that limited use of alcoholic beverages is permissible as set out above; and
- VIII. Require that a report be filed with the Senior Student Affairs Officer each semester identifying all actions taken pursuant to the Student conduct policies required in this Student Code.

C. The University may impose additional or more restrictive conditions on official recognition.

D. Organizations are also subject to the SDBOR and University antidiscrimination policies, as set forth in SDBOR Policy 1.4.4 and University Policy 4:3. However, social fraternities

and sororities that are exempt from taxation under federal law may maintain single-sex membership practices without violating antidiscrimination policies, as recognized by 20 U.S.C. 1681(a)(6).

4. Student Conduct Process

a. Allegations of Sexual Harassment

- i.** Allegations of sexual harassment against a student shall be addressed exclusively through SDBOR Policy 1.4.1 and University Policy 4:4.

b. Allegations other than Sexual Harassment

- i.** All allegations other than sexual harassment against a student shall be addressed as set forth herein.
- ii.** Allegations of misconduct may be reported against any Student by anyone. Allegations shall be directed to the Student Conduct Officer in the Office of the Vice President for Student Affairs and Enrollment Management. The reporting party will disclose the facts that form the basis for the allegation, the identities of any other witnesses, and any other relevant information regarding the alleged misconduct.
 - A.** Allegations of academic misconduct will be reported to the Student Conduct Officer but are initially addressed through SDBOR Policy 2.9.2 and University Policy 2:4.
 - B.** Allegations of Human Rights Violations shall follow the process outlined in SDBOR Policy 1.4.3 and University Policy 4:6.
 - I.** The investigator assigned must not have any actual or reasonably perceived conflicts of interest and biases for or against any party involved in the initial

complaint. If the University determines that an actual or reasonably perceived conflict of interest does exist, another individual must lead the investigation on behalf of the University.

- II. The investigator assigned must be trained to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence, including both evidence that tends to suggest a violation and evidence that tends to suggest no violation, and take into account the unique and complex circumstances of each case.
 - III. The investigator assigned should avoid using any investigative techniques or approaches that apply sex stereotypes or generalizations.
 - IV. Each party should be provided written Notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation.
 - V. The investigation should result in a written report summarizing the relevant evidence that tends to suggest a violation and evidence that tends to suggest no violation.
 - VI. The investigator assigned must make findings of fact and conclusions as to whether the facts support a Human Rights Violation.
- iii. The Student Conduct Officer shall make an initial determination whether the allegations, if true, would violate the Student Code. If the Student Conduct Officer determines that the allegations, if true, would violate the Student Code, the Student Conduct Officer shall conduct a pre-investigation inquiry to determine whether the allegations are credible. This process may include speaking with witnesses and reviewing any documentation.

- A. The Student Conduct Officer must not have any actual or reasonably perceived conflicts of interest and biases for or against any party involved in the initial complaint. If the University determines that an actual or reasonably perceived conflict of interest does exist, another individual must lead the investigation on behalf of the University.
 - B. As to off-campus conduct, the Student Conduct Officer shall determine whether the incident adversely affects the University, any Organizations, members of the University community, or the pursuit of their lawful objectives.
 - C. Allegations of academic misconduct that are not informally resolved pursuant to SDBOR Policy 2.9.2 and University Policy 2:4 will enter the Student Conduct process here.
 - D. Allegations of Human Rights Violations that are not informally resolved pursuant to SDBOR Policy 1.4.3 and University Policy 4:6 will enter the Student Conduct process here.
- iv. If the Student Conduct Officer determines that either (i) the allegations, if true, would not violate the Student Code or (ii) that the allegations are not credible, then the Student Conduct Officer should inform the Complainant of this determination and inform the Complainant that the allegations may be resubmitted should additional information become available.
 - v. If the Student Conduct Officer determines that the allegations, if true, would violate the Student Code and determines that the allegations are credible and will be investigated, the Student Conduct Officer shall provide written notice to the Respondent within fifteen (15) days of receiving the report of alleged misconduct or notification from the Faculty Member of the need to address alleged academic misconduct through the Student Code.
 - vi. The written notice to the Respondent must include the following:

- A.** The alleged behavior that would be a violation of the Student Code;
 - B.** The date and location of the alleged behavior;
 - C.** The section(s) of the Student Code alleged to have been violated;
 - D.** The name of the Complainant;
 - E.** A time to meet with the Student Conduct Officer to provide the Respondent with the opportunity to give their account of the incident leading to the allegation of misconduct;
 - F.** Information about the right to have an Advisor present throughout the Student Conduct process;
 - G.** Information about both the informal and formal resolution processes;
 - H.** A time for a hearing to occur no earlier than ten (10), and no later than twenty (20), days after this written notice is deemed received to address any alleged violations that are not informally resolved.
 - I.** The minimum time limit may be waived by the Respondent.
 - II.** The maximum time limit may be extended at the discretion of the Student Conduct Officer.
- vii.** At the time that the written Notice to the Respondent is sent, a written notice shall also be sent to the Complainant containing the information about the right to have an Advisor present throughout the Student conduct process, information about both the informal and formal resolution processes, and the time for the hearing to address any alleged violations that are not informally resolved.

viii. The Student Conduct Officer will conduct an investigation of the allegations, which may include speaking with witnesses and reviewing any documentation. Only in instances where the Student Conduct Officer determines that there is sufficient evidence to establish that the Respondent violated the Student Code by a preponderance of the evidence will the allegations proceed to informal or formal resolution.

- A.** For matters involving Human Rights Violations where an investigation was conducted pursuant to SDBOR Policy 1.4.3 and University Policy 4:6, no additional investigation is required.
- B.** If the Student Conduct Officer determines that there is insufficient evidence to establish that the Respondent violated the Student Code by a preponderance of the evidence, the Student Conduct Officer will inform both parties of this fact and will cancel the hearing. This notification should also inform the parties that the investigation may be re-opened should additional information become available.

c. Interim Measures

- i.** In certain circumstances, the Senior Student Affairs Officer, or designee, may impose interim measures that go into effect immediately, prior to a hearing before a Student Conduct Panel, and remain in effect until no longer needed.
 - A.** Interim measures are intended to protect the interests of both the Complainant and the Respondent prior to a hearing. Interim measures may include, but are not limited to, no-contact directives, residence modifications, academic modifications and support, University work schedule modifications, interim residence suspension, or interim suspension. Interim measures that restrict the ability of either party to discuss the investigation should be

avoided, as they may inhibit the ability of either party to obtain and present evidence or otherwise to defend their interests. Written Notice of interim measures shall be provided to the party to whom the interim measures are directed.

- I. In circumstances involving allegations of stalking, interim measures must be provided upon the request of a Complainant if such measures are reasonably available.
 - II. In fairly assessing the need for a party to receive interim measures, the Senior Student Affairs Officer, or designee, may not rely on fixed rules or operating assumptions that favor one party over another, nor make such measures available only to one party.
 - III. Interim measures should be individualized and appropriate based on the information gathered by the University, making every effort to avoid depriving any Student of their education.
 - IV. The interim measures needed by each Student may change over time, and the Senior Student Affairs Officer, or designee, should communicate with each Student throughout the Student Conduct process to ensure that any interim measures are necessary and effective based on each Student's evolving needs.
- B.** Interim suspension may be imposed only for one or more of the following purposes:
- I. 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;
 - II. To ensure a Student's own physical or emotional safety and well-being; or

III. To ensure the normal operations of the University where a Student poses an ongoing threat of disruption of, or interference with, the normal operations of the University.

C. During the interim suspension, the Student may be denied access to residence facilities, the campus (including classes), and all other University activities or privileges.

D. A Student placed on interim suspension shall be given written notice of interim measures, which shall include:

I. The reasons for the interim suspension;

II. The parameters of the interim suspension; and

III. Information concerning the right to appeal the interim suspension.

E. Interim Suspension Appeal Process

I. The Student must submit a written request for a meeting to the Senior Student Affairs Officer, or designee.

II. The Senior Student Affairs Officer, or designee, will schedule a meeting with the Student as soon as practical and no later than three (3) days after receiving the written request. At this meeting, the Student is provided the opportunity to raise any objections to the interim suspension or to request alternative interim measures.

III. The Senior Student Affairs Officer, or designee, has sole discretion regarding interim measures.

d. Informal Resolution

i. The Student Conduct Officer may speak separately and individually with the Complainant and the Respondent to

determine whether the alleged misconduct can be resolved through informal resolution.

- A. In matters involving allegations of Human Rights Violations, informal resolution may not take the form of having the Complainant and the Respondent be in the same room at the same time, unless both parties agree in writing.
- B. In matters involving allegations of Human Rights Violations, the Student Conduct Officer should consider whether the informal resolution is equitable and will end the misconduct, prevent its recurrence, and address its effects.

ii. Informal resolution may be reached where:

- A. The parties involved mutually agree to a full resolution of the alleged misconduct that is acceptable to the Student Conduct Officer. This must be documented in writing and signed by the Complainant, Respondent, and Student Conduct Officer.
- B. The Respondent waives a formal hearing by admitting to the misconduct and accepting the proposed sanctions. This must be documented in writing and signed by the Respondent and the Student Conduct Officer.
 - I. This type of informal resolution is not available in matters involving allegations of Human Rights Violations.
- C. Partial informal resolution may be reached where the Respondent admits to the misconduct but does not accept the proposed conduct sanctions. When this occurs, the process moves to formal resolution with the hearing being limited to the question of appropriate conduct sanctions. This must be documented in writing and signed by the Respondent and the Student Conduct Officer.

Officer shall have sole discretion regarding whether the Student Conduct Panel includes:

- I. Option 1: only the Student Conduct Officer; or
 - II. Option 2: the Student Conduct Officer and any University employee or employees or independent contractor authorized by the Senior Student Affairs Officer to determine whether a Student has violated the Student Code and to recommend imposition of conduct sanctions.
- B.** For matters involving allegations of academic misconduct, the Student Conduct Panel must include at least one Faculty Member or academic administrator appointed by the Provost in the form described in Option 2 above.
- C.** Both the Complainant and the Respondent will be provided notice of the identity of the member(s) of the Student Conduct Panel. Both parties may request in writing (and must include supporting information) that (i) the Student Conduct Panel include additional members (Option 2), and/or (ii) a Student Conduct Panel member be replaced due to an actual or reasonably perceived conflict of interest. Such requests must be submitted, in writing to the Senior Student Affairs Officer no later than twenty-four (24) hours after the notice is provided to the party. The Senior Student Affairs Officer shall make a final decision as to these requests and will provide notice to both parties of the decision.
- iii.** Hearings shall be conducted by a Student Conduct Panel according to the following guidelines:
- A.** Hearings shall be conducted in private. Witnesses other than the Complainant and the Respondent may only be present during the hearing while presenting their information.

B. The Chair shall have sole discretion and final decision-making authority over the following:

- I.** Whether an individual's conduct interferes with the hearing and requires that individual's removal;
- II.** Whether written information, materials, documents, and statements submitted are relevant and will be accepted for consideration by the Student Conduct Panel;
- III.** All questions about the interpretation of the Student conduct process; and
- IV.** Whether to have separate or joint hearings when a hearing would involve more than one Respondent.

iv. Neither the Complainant nor the Respondent are required to attend or participate in the hearing, and such decision will have no bearing on the question of whether the Respondent violated the Student Code.

v. The Respondent has no obligation to provide any information, materials, documents, or witnesses, or answer any questions and is presumed to not have violated the Student Code. The burden is on the University to gather sufficient evidence to reach a fair, impartial determination as to whether the alleged violation of the Student Code occurred.

vi. If the Complainant or Respondent wants the Student Conduct Panel to review any materials or documents or wants to present any witnesses at the hearing, such materials and documents and/or witness lists must be submitted to the Chair by the following deadlines in order to be considered:

- A.** In matters alleging Human Rights Violations, all materials and documents and/or witness lists must be submitted at least seventy-two (72) hours before the hearing. Additionally, a copy of the final report prepared by the Title

IX/EO Coordinator will be provided to the Complainant, Respondent, and the Student Conduct Panel members.

- B.** For all other matters, all materials and documents and/or witness lists must be submitted at least twenty-four (24) hours before the hearing.
 - C.** The Chair will promptly provide the other party and the Student Conduct Panel members a copy of any materials, documents, and witness lists submitted.
- vii.** The Complainant and the Respondent have the right to be assisted by an Advisor of their choice, at their own expense. Ordinarily, no more than two Advisors for each Student shall be permitted. The Advisor is limited to advising the Student directly, and is not permitted to speak to anyone else, or participate directly, in any hearing.
- viii.** The Student Conduct Officer shall record the audio of the hearing.
- ix.** Generally, the hearing will be conducted in the following order:
 - A.** The Chair will ask each individual present at the hearing to identify themselves by providing their name and role at the hearing (e.g. Complainant, Respondent, member of the Student Conduct Panel, etc.).
 - B.** The Chair will remind the Respondent:
 - I.** Of the materials that the Student Conduct Panel received prior to the hearing;
 - II.** Of the right to have an Advisor present;
 - III.** Of the right to refuse to speak as a witness against themselves;
 - IV.** That the refusal to speak as witness against themselves will have no bearing on the question of whether the Respondent violated the Student Code;

then:

- I. The Chair will provide the Respondent the opportunity to provide any additional relevant factual details that were not previously provided. The Respondent may choose to do so or may decline and maintain the right to not provide information, materials, documents, or answer questions. The Respondent may decline but still present witnesses.
 - II. The Chair will ask the Respondent to present any witnesses, who will be brought to the hearing one at a time, and ask questions of the witness.
 - III. The Student Conduct Panel will then ask questions of the witness.
 - IV. The Chair will ask the Complainant for any questions for the witness. The Complainant will provide the Chair any questions in writing.
 - V. The Chair will ask the witness any questions provided by the Complainant that the Chair determines to be relevant.
 - VI. The Chair will ask the Respondent to present the next witness. The process described above shall repeat for each witness until the Respondent has presented all of its witnesses.
-
- x. The Student Conduct Panel may ask the Complainant and/or the Respondent whether they agree to answer questions. The Student Conduct Panel may then ask questions of either or both parties who agree to answer questions.
 - xi. The Student Conduct Panel will meet in a closed session to discuss and make its recommendation, which closed session shall not be audio recorded.

- xii.** The Student Conduct Panel shall review all information and materials presented to it and shall decide by majority vote whether the Respondent violated the Student Code by a preponderance of the evidence (i.e., more likely than not). Decision-making techniques or approaches that apply sex stereotypes or generalizations should be avoided so that the hearing process proceeds objectively and impartially.
- xiii.** The Student Conduct Panel shall prepare written findings to support its determination. If multiple allegations of misconduct exist, a decision should be reached separately for each allegation. These written findings shall include:

 - A.** Concise statements of each factual finding;
 - B.** Brief explanations of whether and why the factual findings support a conclusion that the conduct either violated or did not violate the Student Code (these must address each factual element that must be satisfied to establish that conduct has violated the Student Code);
 - C.** Any initial, interim, or final decisions by the University; and
 - D.** If a violation is found, recommendations of appropriate conduct sanctions and supporting rationale for the conduct sanctions.
- xiv.** The Student Conduct Panel shall forward its written findings to the Chair. The Chair has sole discretion to adopt or reject any portion of the written findings.

 - A.** If any portion of the written findings is rejected, the Chair shall issue new written findings it determines to be appropriate for such portion(s), and will provide the Student Conduct Panel with an explanation for its decision.
 - B.** The Chair shall determine the effective date of any conduct sanctions imposed, which effective date should be on or after the exhaustion of the appeal as a matter of right.

However, interim measures may remain in place, or be instituted, until the effective date of any conduct sanctions.

- xv.** The Chair's written findings, and information about appeal rights, shall be provided to the Respondent. When FERPA allows, the Complainant will receive the permitted information simultaneously.
 - A.** In matters involving allegations of academic misconduct, the Chair's written findings shall also be provided to the Faculty Member.
 - B.** In matters involving allegations of Human Rights Violations, the Complainant must also be provided information about appeal rights.

- xvi.** The audio record of the hearing shall be the property of the University and shall be maintained by the Student Conduct Officer. No other person may record the hearing.
 - A.** The audio record and its contents shall be confidential and may only be used for purposes of any appeals. Any person who discloses the contents of the audio record to parties not involved in the appeal shall be subject to conduct sanction.
 - B.** In the event of an appeal, the Respondent shall be given access to the audio record for purposes of preparing an appeal. When the alleged misconduct involves allegations of Human Rights Violations, the Complainant shall be given access to the audio record for purposes of preparing an appeal. Access shall be provided at such places and times as the Senior Student Affairs Officer may direct.
 - C.** Except as required by law, the University shall not be required to change the form in which the record is maintained.

f. Sanctions

i. Individual Conduct Sanctions

- A.** In each case in which the Chair determines that a Respondent has violated the Student Code, the Chair shall determine and impose appropriate conduct sanction(s). Where a violation of SDBOR or University Policy is established, and where a conduct sanction is mandated under SDBOR or University Policy, that conduct sanction shall be imposed.
 - I.** Conduct sanction decisions must be made for the purpose of deciding how best to enforce the Student Code and should reflect a proportionate response to the violation.
 - II.** In matters involving Human Rights Violations, the Chair should consider whether the sanctions are equitable and will end the misconduct, prevent its recurrence, and address its effects.
 - III.** In matters involving Human Rights Violations, the Chair should consider the impact of separating the Respondent from their education before imposing a conduct sanction of suspension or expulsion.
- B.** In matters involving allegations of academic misconduct that are informally resolved pursuant to SDBOR Policy 2.9.2 and University Policy 2:4, the Student Conduct Officer will receive the information from the Faculty Member and shall determine and impose appropriate conduct sanction(s).
- C.** Complainants shall be informed in writing and at the same time as the Respondent of any outcome and conduct sanctions imposed in the following circumstances:
 - I.** When the conduct sanction involves remedial action that directly relates to the Complainant (e.g., a directive requiring the Respondent to not have contact with the Complainant);

- II.** it has been determined that the Student had a blood alcohol content (BAC) of .20 or greater; or
 - III.** transport to a medical facility due to alcohol poisoning was required; or
 - IV.** At the discretion of the Vice President for Student Affairs and Enrollment Management, successor, or designee, and
 - V.** The Student is less than twenty-one (21) years of age; and
 - VI.** The Student commits the offense while on University owned or controlled property; or
 - VII.** The Student commits the offense during travel sponsored by a University department, college, or recognized Student Organization; or
 - VIII.** The Student commits the offense while attending an event sponsored by a University department, college, or recognized Student Organization.
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- II.** Notification by another South Dakota public university within the SDBOR system that a University Student has been involved in a situation on that university's campus which leads to a minimum sanction of behavioral probation and the Student is less than twenty-one (21) years of age.
 - III.** An emergency medical circumstance exists related to alcohol/drugs, even if no violation has occurred. Hospital personnel, family members, or friends may have also notified parents.

- II. Parental notification will likely not occur when:**
 - I. The Student is twenty-one (21) years of age or older; and**
 - II. The Student is merely reported to be involved in a violation of the alcohol/controlled substance policy. (Notification only occurs after a hearing has been conducted and a hearing officer/body has determined that the Student violated policy.)**
 - III. The sanction for the policy violation is less severe than behavioral probation.**
- III. Decisions regarding parental notification are made by the Vice President for Student Affairs and Enrollment Management, successor, or designee, in consultation with the appropriate reporting parties.**
- IV. Notification, except in emergency circumstances, will be done in writing by the Vice President for Student Affairs and Enrollment Management, successor, or designee.**
- V. Students will be sent notice in writing of a parental notification letter. Such correspondence will be sent seven (7) calendar days in advance of the parental notification letter being sent.**
- VI. In all cases, the parent or guardian listed by the Student on University records will be the individual notified. Notification of other interested parties is the responsibility of the Student and/or the parent or guardian or record.**
- ii. The following conduct sanctions may be imposed upon any Respondent found to have violated the Student Code. More than one of the conduct sanctions listed below may be imposed for any single violation. Imposition of a conduct sanction may be**

delayed or suspended on such conditions as the Student Conduct Officer may prescribe.

- A. Warning** – A statement to the Respondent that the Respondent has violated the Student Code of Conduct, which may include a written reprimand sent to the Student indicating additional violations of the Student Code during the warning period of less than one (1) year may lead to more severe sanctions.
- B. Behavioral Probation** – Behavioral probation is for a designated period of time and includes the probability of more severe conduct sanctions if the Respondent is later found to have engaged in any additional violation(s) of the Student Code during the probationary period.
- C. Residence Hall Suspension** – Separation of the Respondent from the University’s residence facilities for a definite period of time, after which the Respondent is eligible to return. Conditions for return to the residence facilities may be specified.
- D. Residence Hall Expulsion** – Permanent separation of the Respondent from the University’s residence facilities. A sanction of residence expulsion will take the form of residence suspension pending completion of the appeals process.
- E. Behavioral Suspension** – Separation of the Respondent from the University for a definite period of time, after which the Respondent is eligible to return. Conditions for return may be specified. A Respondent who has been suspended from one university within the SDBOR system may not enroll at another university within the SDBOR system until the period of suspension has ended.
- F. Expulsion** – Permanent separation of the Respondent from the University. A Respondent who has been expelled from one university within the SDBOR system may not enroll at

another university within the SDBOR system. A sanction of expulsion will take the form of suspension pending completion of the appeals process.

iii. The following nonexclusive list of conditions contains examples that may be added to any conduct sanction, as determined by the hearing officer:

- A.** Loss of Privileges – Denial of specified privileges for a designated period of time. The privileges of continued participation in University activities, access to University facilities or residences may be conditioned upon participation in or completion of educational programming at the Student’s expense.
- B.** Fines – Monetary payments that are associated with certain sanctions. Students will be required to pay for educational programming, chemical dependency screening, not completing sanctions, and, as applicable to formal hearings with a panel, reimburse the University for the room and equipment rental if found responsible for a violation of the Student Code.
- C.** Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service, money, or material replacement.
- D.** Educational Activities – Work assignments, essays, service to the University, community service, workshops, or other related educational activities.
- E.** Withholding Degree – The University may withhold awarding a degree otherwise earned until the completion of the Student conduct process or the completion of all conduct sanctions imposed.
- F.** Revoking Admission and/or Degree – The University may revoke admission to, or a degree awarded from, the University for violation of University standards for

obtaining admission or the degree, or for other serious violations of the Student Code committed by the Respondent prior to graduation.

- iv.** Conduct sanctions shall not be made part of the Respondent's permanent academic record, but shall become part of the Respondent's conduct record. The Respondent's conduct record containing conduct sanctions other than suspension, expulsion, revoking admission and/or a degree, or withholding a degree, will be expunged seven (7) years after the date of the original finding of a violation of the Student Code. The Respondent's conduct record containing any of the conduct sanctions above shall be maintained permanently. Where restitution is required of a Respondent, the University reserves the right to disclose all portions of the conduct file as may be necessary to obtain a judgment in a court of competent jurisdiction. Such files shall be preserved at least until all necessary compensation has been obtained.
- v.** Students enrolled at the University shall be held accountable for their conduct while visiting all other universities within the SDBOR system. Students may be required, as a condition of continued enrollment, to appear at the university where the alleged misconduct took place, at their own expense, for a conduct hearing and to answer allegations based on their conduct while at that university.

 - A.** Any conduct sanction imposed by a university within the SDBOR system shall be effective at all other universities within the SDBOR system. A Respondent suspended at one university within the SDBOR system shall not be able to enroll at another university within the SDBOR system until the period of suspension has ended. A Respondent who has been expelled from one university within the SDBOR system may not enroll at another university within the SDBOR system.

- B.** When a Respondent is brought forward on allegations of misconduct by another SDBOR university, any conduct sanction issued after a finding of a violation shall be determined by the university that brought forward the allegations of misconduct. Unless suspension or expulsion is mandated by this policy or SDBOR Policy 3.4.1, suspension or expulsion may only be imposed after first consulting with the Senior Student Affairs Officer from the university where the Respondent is enrolled.

g. Organizational Conduct Sanctions

- i.** The following conduct sanctions may be imposed upon Organizations:

- A.** Those conduct sanctions listed above in 4.e.i. and 4.e.ii.

h. Appeals

- i.** Appeal as a Matter of Right

- A.** The Respondent may appeal a decision reached by the Chair. In matters involving allegations of Human Rights Violations, the Complainant may also appeal a decision reached by the Chair. The appeal must be in writing and must be submitted to the Senior Student Affairs Officer no later than five (5) days after notice of the Chair's decision is deemed received.
 - B.** The written appeal must cite at least one (1) of the following reasons for review and must include supporting arguments and documentation as to why an appeal should be granted on those grounds:
 - I.** The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;

- II. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;
- III. The conduct sanction(s) imposed were not appropriate for the violation of the Student Code that the Respondent was found to have committed; and/or
- IV. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.

C. An appeal shall be limited to a review of:

- I. The verbatim record of the initial hearing;
- II. Supporting documents submitted as part of the initial hearing; and
- III. Supporting documents submitted in support of the appeal reason(s).

D. The Senior Student Affairs Officer, or designee, will provide the other party a copy of the appeal and a reasonable amount of time to submit any materials to be considered.

E. The Senior Student Affairs Officer, or designee, will provide the Appellate Board with the materials submitted. The Appellate Board will review the materials submitted and provide a written recommendation to the Senior Student Affairs Officer as soon as practicable. The Senior Student Affairs Officer has sole discretion to adopt or reject the recommendation.

- I. In instances where the Respondent appeals a decision reached by the Chair, sanctions or conditions may not be increased, introduced for the first time, or extended.

II. If the recommendation is rejected, the Senior Student Affairs Officer will provide the Appellate Board with a written explanation for their decision.

III. The Senior Student Affairs Officer shall determine the effective date of any conduct sanctions imposed. The effective date of any conduct sanctions shall not be delayed pending any further appeals.

F. The Senior Student Affairs Officer's written decision shall be provided to the parties, along with the Appellate Board's recommendation and, if rejected, the Senior Student Affairs Officer's written explanation.

I. The Senior Student Affairs Officer may return the matter to the hearing panel for reconsideration or to the Title IX/EO Coordinator for additional investigation, in light of the written decision.

ii. Appeal to the University President

A. The Respondent may appeal a decision reached by the Senior Student Affairs Officer. In matters involving allegations of Human Rights Violations, the Complainant may also appeal a decision reached by the Senior Student Affairs Officer.

B. The appeal must be in writing and must be submitted to the President's Office no later than five (5) days after notice of the Senior Student Affairs Officer's decision is deemed received.

C. The written appeal must cite at least one (1) of the following reasons for review and must include supporting arguments and documentation as to why an appeal should be granted on those grounds:

I. The original hearing was conducted unfairly to the point that it substantially and materially affected the outcome;

- II. Using the facts found by the Chair, the conclusion regarding whether there was a violation(s) of the Student Code was incorrect;
 - III. The conduct sanction(s) imposed were not appropriate for the violation of the Student Code that the Respondent was found to have committed; and/or
 - IV. New information that was unavailable at the time of the hearing has been discovered and could substantially and materially affect the outcome.
- D. The University President has sole and complete discretion as to whether to agree to review an appeal, including what materials to consider. However, the President will not consider any reasons for review that were not previously raised in the appeal to the Appellate Board.
- E. If the President agrees to review an appeal, the President will provide the other party/parties a copy of the appeal and a reasonable amount of time to submit any materials to be considered.
- F. The President will provide a written decision to the parties, and to the Senior Student Affairs Officer. The decision may be a substantive one, or may merely indicate that the President has declined to review the appeal.
- I. The President may return the matter to the Senior Student Affairs Officer or hearing panel for reconsideration, or to the Title IX/EO Coordinator for additional investigation, in light of the written decision.

iii. Appeal to the SDBOR

- A. After exercising and exhausting all appeals available at the University level, the Respondent may appeal a decision reached by the University President. In matters involving allegations of Human Rights Violations, the Complainant may also appeal a decision reached by the University

President after exercising and exhausting all appeals available at the University level.

- B.** The appeal must be in writing and must be submitted to the SDBOR Executive Director no later than thirty (30) days after notice of the University President's decision is deemed received. The appeal must include the following:
 - I.** Supporting arguments and documentation;
 - II.** All documentation provided by the University, including, at a minimum, the President's decision, the Senior Student Affairs Officer's decision, and the Chair's decision.
- C.** Written appeals that fail to include supporting arguments and documents and the documentation provided by the University will be rejected.
- D.** An appeal submitted to the SDBOR Executive Director that is not covered by subsection 4.g.iii.5. below may be considered by the SDBOR Executive Director. In these instances, the SDBOR Executive Director has sole and complete discretion as to whether to agree to review an appeal, including what materials to consider.
 - I.** If the SDBOR Executive Director agrees to review an appeal, the SDBOR Executive Director will provide the other party a copy of the appeal and a reasonable amount of time to submit any materials to be considered.
 - II.** The SDBOR Executive Director will provide a written decision to the parties, and to the University President.
 - III.** The SDBOR Executive Director may return the matter to the University President, Senior Student Affairs Officer, or hearing panel for reconsideration or to the Title IX/EO Coordinator for additional investigation, in light of the written decision.

- E.** An appeal submitted to the SDBOR Executive Director must be considered by the SDBOR where a Student has been expelled or suspended based upon alleged violations of this policy or SDBOR Policy 3.4.1; or a disciplinary action allegedly deprived the Student of a right or privilege protected by a specific term or provision of SDBOR or University Policy or state or federal constitution, law, or regulation.
- I.** The SDBOR Executive Director will have fifteen (15) working days within which to attempt, at their discretion, a resolution through informal means.
 - II.** If no informal resolution has been effected within the fifteen (15) working days, the SDBOR Executive Director will refer the matter to a hearing examiner for reconsideration pursuant to SDCL § 1-26 using the contested case proceedings. At the conclusion of the contested case proceedings, the hearing examiner will provide a recommendation to the SDBOR Executive Director for the disposition of the matter by the SDBOR.
 - III.** Contested case proceedings may be conducted under protective orders entered pursuant to SDCL §§ 1-26-19 and 15-6-26(c).
 - IV.** The SDBOR may return the matter to the University President, Senior Student Affairs Officer, or hearing panel for reconsideration or to the Title IX/EO Coordinator for additional investigation, in light of the written decision.

5. Responsible Administrator

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

Approved by President on 08/01/2014. Revised in accordance with SDBOR revisions; Approved by President on 09/29/2015. Revised in accordance with SDBOR revisions; Approved by President on 09/01/2016. Revised in accordance with SDBOR revisions; Approved by President on 02/12/2018. Revised; Approved by President on 1/28/2019. Revised; Approved by President on 07/29/2021. Revised 01/29/2024 (clerical). Revised 06/10/2025 (interim).

Source: SDBOR Policy 3.4.1

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

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