

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 6 – C

DATE: May 9, 2023

SUBJECT

New BOR Policy 1:35 – Minors on Campus (Second Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL chapter 11-12](#) – Adult Oriented Business

[SDCL chapter 22-24](#) – Obscenity and Public Indecency

BACKGROUND / DISCUSSION

The first reading of the proposed Minors on Campus policy was approved by the Board at its [March meeting](#), which was in response to the Board’s December 21st directive to staff to develop a policy to safeguard and protect the well-being of minors visiting campus, attending university-sponsored events or programs, or participating in external organization programs and activities on campus. The proposed policy set forth in Attachment I includes various edits from the first reading (changes tracked), which were in response to questions and/or feedback received from stakeholders. The adjustments from the original draft do not substantively alter the underlying intent of the policy, but they do provide additional clarification to ensure we are addressing the appropriate issues and/or covering the intended areas in a responsible fashion.

The proposed policy applies to university sponsored programs, as well as externally sponsored programs occurring on campus, involving the presence of minors, providing certain baseline requirements in areas such as: prohibited conduct; appropriate supervision of non-student minors; background checks; duty to report inappropriate conduct; and sanctions for noncompliance. Staff will walk through the key aspects of the revisions from the first reading and provide any updates at the meeting.

IMPACT AND RECOMMENDATION

The proposed Minors on Campus Policy will provide consistent protocol and process across the system for events bringing minors to campus.

Staff recommends approval.

ATTACHMENTS

Attachment I – New BOR Policy – Minors on Campus

DRAFT MOTION 20230509_6-C:

I move to approve the second and final reading of the new BOR Policy 1:35 – Minors on Campus, as presented.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Minors on Campus

NUMBER: 1:35

A. PURPOSE

To take affirmative steps to safeguard and protect the well-being of minors visiting campus, attending university-sponsored events and programs, or participating in external organization programs and activities that utilize campus facilities.

B. DEFINITIONS

1. **Authorized Adult:** An individual age eighteen (18) and older, paid or unpaid, who interacts directly with, supervises, chaperones, or otherwise oversees Non-Student Minors participating in a Program.
2. **External Organization:** Any individual or group not acting on behalf of the institution, or any individual or group acting independently of the institution, which includes recognized student organizations.
3. **Externally Sponsored:** Under the direct control of an External Organization.
4. **Minor:** An individual under the age of eighteen (18).
5. **Non-Student Minor:** A Minor who is not enrolled or accepted for enrollment at the university. The term includes students who are dually enrolled in university programs while also enrolled in ~~primary or~~ secondary schools.
6. **One-On-One Contact:** Personal, unsupervised interaction between any Authorized Adult and a Non-Student Minor without at least one other Authorized Adult, parent, or legal guardian being present.
7. **Program:** Any non-credit activity, event, or program that is University Sponsored, regardless of its location, or any activity, event, or program that is Externally Sponsored and uses University Facilities, but shall exclude the following exempt Programs:
 - 7.1. Research protocols involving Minors as human subjects, which are subject to the requirements specified by the relevant Institutional Review Board;
 - 7.2. University Sponsored or Externally Sponsored athletic competitions which are open to the general public in full group or assembly format;
 - 7.3. Recreational, exercise, or wellness programs or activities conducted in a facility open to membership or use by non-university affiliated persons by means of written agreement with an External Organization; and

- 7.4. ~~Private-Lawful private events or other lawful private usage of University Facilities held~~ by an External Organization in ~~University Facilities accordance with applicable university policy and~~ through a written agreement with the university, which are not open to, whether by paid admission or otherwise, the general public, student body, or campus community. ~~This exemption does not include Youth Programs, or otherwise exempt lawful private events or other lawful private usage of University Facilities from compliance with the provisions of Section C.2 below.~~
8. **Program Leader:** The Authorized Adult designated by the program sponsor that is responsible for the operation and management of the ~~P~~program.
9. **University Facilities:** Buildings, structures, facilities, ~~rooms,~~ landscaping, and grounds owned or controlled by the university, but excluding municipal streets or sidewalks or public highways or rights of way that abut a campus.
10. **University Sponsored:** Under the direct control of university employees acting within the scope of their employment.
11. **Youth Program:** Any Program that is designed to serve or is targeted towards Non-Student Minors, at which parents or guardians are not expected to remain with, and be responsible for, their Non-Student Minor.

C. POLICY

1. **Non-Student Minors on Campus**

- 1.1. Non-Student Minors are generally permitted in University Facilities only as invitees, participants, or visitors, and must be under the supervision of an Authorized Adult, parent or legal guardian, or other chaperone permitted to be in a University Facility by virtue of their status as a student, employee, or volunteer of the university. so long as they adhere to applicable BOR and/or university policies. ~~Non-Student Minors, and their supervising Authorized Adult, parent or legal guardian, or chaperone, who fail to comply with BOR and/or university policies while in University Facilities may be immediately removed from University Facilities. Non-Student Minors are generally not permitted in University Facilities without an authorized purpose or express written permission, or unless they are accompanied by an Authorized Adult, parent or legal guardian, or other chaperone permitted to be in the University Facilities by virtue of their status as a student, employee, or volunteer of the university.~~
- 1.2. All Non-Student Minors participating in Programs on campus are generally permitted supervised use of the University Facilities identified for the Program. The University reserves the right to restrict anyone, including Non-Student Minors, from certain areas or facilities or from using specified equipment.

2. **Programs ~~Involving Open to Non-Student~~ Minors**

2.1. Prohibited Conduct

- 2.1.1. No Program involving the presence of ~~Non-Student~~ Minors may include:

- 2.1.1.1. Specific sexual activities, as defined by SDCL § 11-12-1(15), or any material or other media ~~of any kind depicting~~containing specific sexual activities;
- 2.1.1.2. Obscene live conduct, as defined by SDCL § 22-24-27; or
- 2.1.1.3. Any material, performance, description, or representation, in whatever form, meeting the definition of harmful to minors in SDCL §22-24-27(4);
- ~~2.2.0.0. Nudity, as defined by SDCL § 11-12-1(10), unless the Program is advertised with a disclaimer noting it contains nudity; or~~
- ~~2.3.0.0. Content that is patently offensive to prevailing community standards in the adult community as a whole with respect to what is suitable material for minors, unless the Program is advertised with a disclaimer noting it contains, as appropriate, adult language, adult content, excessive violence, and/or explicit content.~~

2.2. Content Descriptors

- 2.2.1. Content descriptors shall be used, as appropriate, for Programs which are open to Minors to provide parents or legal guardians with information about the content of the Program. Programs which may include nudity, sexual situations, violence, and/or other explicit content shall include the appropriate descriptor(s) (e.g., “may contain explicit content”) on any promotional material for the Program published, electronically or in print, on a university platform.

3. Program Administration

- 3.1. Authorized Adults participating in Programs involving the presence of Non-Student Minors may not:
 - 3.1.1. Have One-On-One Contact with Non-Student Minors, unless the nature of the specific Program activity requires the same (e.g., private lessons, tutoring, interviews, etc.), in which case the One-On-One Contact must take place in a location that is observable, ~~open,~~ and interruptible;
 - 3.1.2. Have any direct electronic ~~contact~~ communication, including social media, with Non-Student Minors without an education or programmatic purpose for the communication and without another Authorized Adult, or the Non-Student Minors parent or guardian, being included in the communication;
 - 3.1.3. Enter a Non-Student Minor’s private room, bathroom facility, changing area, shower area or similar private area occupied by a Non-Student Minor without another Authorized Adult in attendance;
 - 3.1.4. Take pictures of Non-Student Minors except as part of official pictures of the Program and only when the parent or legal guardian has signed the appropriate waiver;
 - 3.1.5. Haze, bully, or otherwise engage in abusive conduct of any kind toward, or in the presence of, a Non-Student Minor;

- 3.1.6. Use alcohol or illegal drugs while supervising, or in the presence of, a Non-Student Minor;
 - 3.1.7. Strike, hit, administer corporal punishment to, or touch in an inappropriate or illegal manner, or manner that a person could reasonably interpret as inappropriate, any Non-Student Minor or allow the same between Non-Student Minors; or
 - 3.1.8. Use or allow any obscene or sexually suggestive comments or sexual innuendo to, or in the presence of, a Non-Student Minor.
- 3.2. All Programs, Authorized Adults, and any other individual(s) participating in a Program, must comply with the provisions of this policy, any applicable BOR or university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations.
- 3.3. Program Leader
- 3.3.1. A Program Leader must be appointed for each Youth Program ~~involving the presence of Non-Student Minors.~~
 - 3.3.2. The Program Leader is responsible for:
 - 3.3.2.1. Training all employees and volunteers in, and adhering to, this policy and any other applicable policies, procedures, laws, or regulations applicable to the Youth Program;
 - 3.3.2.2. Certifying background checks have been conducted on Authorized Adults in accordance with this policy;
 - 3.3.2.3. Establishing a procedure for notification of parents or legal guardians of all participants in the event of an emergency;
 - 3.3.2.4. Completing and retaining all required forms; and
 - 3.3.2.5. Establishing a plan for maintaining adequate supervision considering the number and age of Non-Student Minors participating in the Youth Program.
- 3.4. Supervision
- 3.4.1. Youth Programs must be supervised by two (2) or more Authorized Adults at all times.
 - 3.4.2. Separate sleeping ~~accommodations rooms~~ are required for Authorized Adults and Non-Student Minors participating in Programs involving overnight stays, unless the Authorized Adult is a parent, guardian, or sibling of the Non-Student Minor. Signed written permission from a parent or guardian is required for a Non-Student Minor to stay overnight while participating in a Program.
- 3.5. Background Checks
- 3.5.1. For University Sponsored Youth Programs, background checks shall be conducted ~~or required~~ for all Authorized Adults participating in Youth

Programs involving Non-Student Minors in accordance with applicable university policy.

- 3.5.2. For Youth Programs sponsored by External Organizations, all Authorized Adults affiliated with the Youth Program must have been subject to, and pass, a criminal background check and a sex offender registry check within the previous twelve months, unless the Authorized Adult is a university employee and has undergone a background check in accordance with 3.5.1 above. At a minimum, the criminal background check and sex offender registry check must consist of a search conducted by a qualified background check service provider, and include a review of criminal court records of all counties of residence based on the Authorized Adult's past seven (7) years of residential addresses. After the background check process and at any time during the Youth Program, Authorized Adults are required to notify the Program Leader of an arrest or conviction as soon as reasonably possible if the arrest or conviction could result in the Authorized Adult's disqualification from participation as such in the Youth Program. Pending charges will be reviewed in conformity with the standards contained in the university's background check policies and applicable law.
- 3.5.3. Authorized Adults shall cooperate with any request for a background check made pursuant to this policy.
- 3.5.4. No Authorized Adult may be listed on any sex offender registry. The following types of convictions will normally render an individual ineligible to work or volunteer at a Program:
- 3.5.4.1. Drug distribution or felony drug possession;
 - 3.5.4.2. Sexual offenses;
 - 3.5.4.3. Domestic violence;
 - 3.5.4.4. Stalking
 - 3.5.4.5. Crimes of violence involving physical injury to another person;
 - 3.5.4.6. Child abuse, molestation, child pornography or other crimes involving child endangerment, including neglect and abandonment;
 - 3.5.4.7. Murder;
 - 3.5.4.8. Kidnapping; or
 - 3.5.4.9. Any other crime involving moral turpitude, as defined in SDCL § 22-1-2(25).
- 3.5.5. The following Authorized Adults are ~~excluded~~ exempt from the background check requirements under this policy, ~~unless the nature of the Program involves overnight stays~~:
- 3.5.5.1. Authorized Adults who engage with Non-Student Minors at -Youth Programs where the Non-Student Minors are under the direct supervision,

care and control of teachers, parents or other adult chaperones from the Non-Student Minor's school or organization; and

- 3.5.5.2. Guest presenters or participants in Youth Programs if Non-Student Minors remain under the direct supervision of Authorized Adults who have successfully completed a background check pursuant to this policy.

4. Duty to Report Inappropriate Conduct

- 4.1. Anyone who is not subject to a recognized legal privilege who witnesses or suspects that there may be inappropriate conduct towards or touching of Minors must immediately contact the university's designated law enforcement unit. Further, all participation in the Program by a person accused or suspected of inappropriate conduct with a Minor must immediately cease until the allegations have been satisfactorily resolved by the university's designated law enforcement unit.

5. External Organization Contracts

- 5.1. External Organizations that operate Programs involving Non-Student Minors must be aware of, and comply with, this policy. The specific requirements of this policy must be incorporated into any contract or subcontract with External Organizations for Programs that involve Non-Student Minors.

6. Sanctions

- 6.1. Failure to comply with the provisions of this policy, any applicable BOR or university policy or procedure, and/or any other applicable requirement of federal, state, or local laws or regulations may result in suspension, discontinuance and/or cancellation of the Program and/or discipline in accordance with BOR and/or university policies.

7. Exceptions

- 7.1. Only in rare and unusual circumstances may an exception to this policy be granted. Individuals may submit a written request for exception to the university president, or their designee, who will determine whether an exception to the policy will be granted. Any approved exception to this policy must be in writing, to include the nature of the exception and the rationale for its approval.

FORMS / APPENDICES:

None

SOURCE:

[BOR May 2023.](#)