

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Facilities Use by Private Parties

NUMBER: 6:13

1. Institutional facilities and grounds embody investments by students and taxpayers to advance the educational, research, and service missions of the institution. They are not open to the public for assembly, speech, or other activities as are the public streets, sidewalks, parks, or seats of government. Institutional facilities and grounds are selected, designed, and operated to balance aesthetic and utilitarian considerations, to provide settings conducive to learning and research, and to provide venues to expose students to high and popular cultural activities. These purposes define the priorities for their use by private parties.
 - A. Casual visitors may enter institutional facilities and grounds to conduct business with the institution, to attend institution sponsored events, exhibits or programs that are open to the public, to deliver goods ordered by residents or to traverse the grounds without stopping, or for purposes incidental to personal family or social matters involving students or institutional staff.
 - B. Private parties may request permission to use facilities or grounds for private meetings or events. Such requests may be granted to the extent that institutional program schedules permit if the requested use is lawful and otherwise consistent with this policy, poses no risk of harm to persons or property, and will not disrupt the intended use of the facilities or grounds by the institution, its students, staff, or other visitors.
 - C. Permission to use facilities or grounds for private meetings or events shall be contingent upon agreement to avoid disruption of institutional uses of the facilities or grounds, interference with students or employees, or damage, fouling or littering facilities, grounds or other property. Private users shall be responsible for the cleanliness and order of any facilities or grounds that they use.
 - D. Institutional facilities and grounds are tax exempt public facilities and, as such, are not generally available for use by private parties for commercial purposes. Institutions may contract with private parties to provide goods and services on its behalf, to provide access to dedicated advertising venues or to engage in limited mission-related testing, research or economic development activities. As part of their service to the state and their host

communities, institutions may designate specific venues where third parties may schedule occasional activities that may have incidental commercial purposes.

- E. Some institutional facilities and grounds may be restricted, and private parties may only venture there if specifically invited by a person with authority to invite them. Buildings or facilities that are ordinarily open during regular business hours shall be deemed to be restricted areas if they have been locked.

2. Definitions:

- A. “Affiliated entity,” and its cognates, includes organizations, such as institutional foundations, whose legal purpose includes support of the institution and its activities, organizations that have been authorized by the institution to use its name and marks, and student organizations recognized by the institution, as well as the State of South Dakota and its political subdivisions, and their instrumentalities.

- B. “Commercial purposes” include activities that involve the exchange of goods or services for valuable consideration and speech that relates solely to the economic interests of the speaker and audience and proposes a commercial transaction.

- C. “Disrupt,” and its cognates, includes any actions that infringe institutional rules, interrupt institutionally sponsored or authorized instructional, research or service activities, or substantially interfere with the opportunity of other persons to use institutional grounds or facilities for their intended or authorized purposes.

- D. “Facilities and grounds” includes buildings, structures, internal streets and sidewalks, parking facilities, athletic facilities, landscaping and grounds owned or occupied by the institution, but excludes municipal streets or sidewalks or public highways or rights of way that abut or traverse a campus.

- ~~D.~~E. “Private party” includes any individual or group other than the institution, its affiliated entities, or their officers, agents, faculty, or staff when acting on their behalf.

- ~~E.~~F. “Events” includes speeches, presentations, social gatherings, religious ceremonies, entertainments, youth camps or other activities that pose no substantial risk of injury to persons and property and that are generally consistent with the kinds of activity sponsored by the institution itself.

F.G. “Working days” means those days when the offices of the institution are open for business.

3. Private parties must request prior authorization to use a facility or a portion of the institutional grounds. Each institution shall develop and shall make public practices and rules to implement this policy. In particular,
 - A. Each institution shall appoint a person or persons to receive and to administer private party requests for permission to use institutional facilities or grounds for meetings or events.
 - B. Each institution shall designate those facilities, or portions thereof, or portions of the grounds that may be used by private parties for meetings or events, and shall specify whether, when and how private parties may use application in conjunction with their meetings or events. Each institution shall differentiate between meeting rooms and classrooms that are appropriate for meetings involving up to one hundred persons and lecture halls, auditoria, outdoor areas and other places that are appropriate for larger events and gatherings. If an institution elects to permit limited activities for commercial purposes, it shall identify which facilities are available for such purposes and shall indicate what kinds of commercial purposes may be pursued in the facilities.
 - C. Each institution shall designate those days, including finals week and the week preceding it, when facilities and grounds will not be available for private meetings or events.
 - D. Each institution shall establish and publicize local rules to implement this policy. These rules shall provide, at minimum, that
 - 1) Private parties may request permission to use institutional facilities or grounds for meeting or events that will not interfere with the use of the facilities by the institution or institutionally affiliated organizations.
 - 2) Private parties seeking permission to use institutional facilities or grounds shall complete and submit written applications on forms developed by the institution.
 - 3) Private parties requesting permission to use facilities or grounds for events shall submit completed forms and all necessary attachments no less than three (3) working days prior to the date on which they wish to use the facilities or grounds.

- 4) Private parties may not reserve facilities or grounds for regularly scheduled meetings, thereby precluding institutional uses of the facility.
- 5) Private parties who have been granted permission to use institutional facilities shall agree to abide by all institutional regulations and shall not publicize their meetings or events in ways that suggest co-sponsorship by the institution.
- 6) Private parties shall agree to restore facilities and grounds to the state of cleanliness and repair in which they found them or to pay for custodial or repair services at standard university rates and for extraordinary restoration or replacement expenses at cost.
- ~~7)~~ Private parties shall agree to avoid actions that disrupt pedestrian or vehicular traffic on campus grounds, interfere with the instructional, research, service or administrative activities of the institution or disrupt meetings or events sponsored by the institution or other private parties.
- ~~8)7)~~ _____
- ~~9)~~ ~~Private parties shall agree to comply with limitations on the use of amplification equipment.~~
- ~~10)8)~~ Private parties seeking permission to use facilities for commercial purposes or to sponsor events with planned attendance of five hundred people or more shall provide security and shall purchase event insurance in the amount of one million dollars, naming the State of South Dakota, the Board, the institution and their officers, agents and employees as named insureds.
- ~~11)9)~~ Private parties may be charged fees at published rates to cover the costs institutions incur to provide private parties access to the selected facilities or grounds and to maintain and to repair of such facilities; however, any such fee(s) must be based on definite and objective criteria that are not content-based.
- ~~12)10)~~ Private parties may be allowed to purchase at published rates institutional services to prepare the facilities for private use, to monitor use of the facilities during meetings or events and to restore the facilities to their prior state.
- ~~13)11)~~ Private parties wishing to serve, or to offer for sale, food or beverages shall make any necessary arrangements with the institutional food service provider, if applicable.

E. Each institution shall establish procedures to implement its local rules. These procedures shall provide, at minimum, that

1) Copies of the Board and institutional rules, information about institutional facilities and grounds available for use by private parties, schedules of fees and all forms needed to apply for permission shall be published, together with contact information to enable readers to obtain clarification of the meaning or application of rules or assistance in completing applications.

~~2) Private parties seeking permission to use institutional facilities or grounds shall complete and submit written applications on forms prepared by the institution, together with all necessary documentation.~~

~~3) Private parties seeking permission to use facilities or grounds for events shall submit the required written documentation no less than three (3) working days prior to the date on which they wish to use the facilities or grounds;~~

~~4)2) The institution shall act upon applications no later than the third (3rd) working day after receipt of a completed application.~~

~~5)3) Except as provided in § III (E) (7), below, the institution shall grant applications for meetings or events if,~~

a. the applications, and all required attachments, have been completed; and

b. the meetings or events ~~have lawful purposes and would otherwise be consistent with this policy and the institutional rules that implement it~~ will comply with the requirements and limitations contained in this policy and the institutional policy(ies) or rule(s) that implement it;

~~c. the meetings or events pose no risk of harm to persons or property;~~

~~d. the meetings or events will not disrupt the intended use of the facilities or grounds by the institution, its students, staff or other visitors;~~

~~e. the meetings or events will take place at times during the academic calendar when private parties are permitted to schedule such uses of facilities or grounds;~~

~~f. the private parties agree to abide by the requirements of this policy and the institutional rules that implement it; and~~

~~g. the meetings or events will not conflict with previously scheduled institutional or private activities.~~

~~6)4)~~ If the institution denies an application for a meeting or event, it shall provide the private party with a written explanation for the denial.

~~a. The denial shall be effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant or deposit of the written denial in the United States mail.~~

~~7)5)~~ The institution may deny applications for meetings or events only if,

a. The private party has failed to comply with the requirements of § III (E) (5), above, or the meeting or event or the requested schedule otherwise does not meet the standards stated in that section.

i. If permission is denied due to a conflict with the academic calendar or with previously scheduled activities, the institution shall propose an alternative facility or place if available for the same time, or an alternative time, if available, for the same place.

b. The private party has on prior occasions made material misrepresentations regarding the nature or scope of a meeting or event previously permitted or has violated the terms of prior use agreements.

c. Any of the following grounds are present:

i. The application for permit contains a material falsehood or misrepresentation;

- ii. The applicant is legally incompetent to contract or to sue and be sued; or
 - iii. The applicant has on prior occasions damaged institutional property and has not paid in full for such damage, or has other outstanding and unpaid debts to the institution.
- d. Private persons whose prior conduct would justify denial of permission to use facilities or grounds may not avoid denial by creating new organizations, by associating themselves with other private organizations or by otherwise associating themselves with others for the purposes of avoiding denial of permission under this section.

~~8)6)~~ A written denial shall advise private parties of their right to appeal the denial by filing a signed, written appeal with the official designated by the institutional chief executive officer to receive such appeals. Any denial issued pursuant to this policy shall be deemed effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant, or deposit of the written denial in the United States mail.

a. The appeal must be presented on the approved form.

~~a.b.~~ The person receiving the appeal shall not be the same official who issued the original denial.

~~b.c.~~ The completed written appeal must be presented within five (5) working days after the denial was ~~communicated, transmitted, or deposited in the mails~~ issued.

~~e.d.~~ The appeal shall state specifically facts that, if proven, would demonstrate

- i. that the denial was based upon an incorrect assessment of material fact or
- ii. that it involved a misinterpretation, misapplication or violation of the requirements of Board or institutional policy.

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

misapplied or violated.

~~d.e.~~ The institution will respond to such appeals via email within two (2) working days after their receipt by the institution. Should the institution deny the appeal, it shall provide in its response the procedure for appealing the decision to the institutional chief executive officer.

~~i.~~ ~~The institution may determine that it shall address the concerns raised by the private party and shall determine whether denial was grounded in fact and proper under § III (E) (7).~~

~~ii.~~ ~~The institutional response shall be effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing the written denial to the applicant or deposit of the written denial in the United States mail.~~

~~e.f.~~ If the private person remains dissatisfied, the private person may appeal to the institutional chief executive officer by filing a written appeal on the same approved form within five (5) working days after the institution issued its response.

~~i.~~ ~~The appeal to the institutional chief executive officer shall state specifically the grounds for believing that the grounds for denial misinterpreted, misapplied or violated the requirements of Board or institutional policy.~~

~~f.g.~~ The institutional chief executive officer shall have ~~fifteen~~ten (10) working days after receipt of such an appeal to conduct such an investigation as may be warranted under the circumstances and to issue a written decision addressing the concerns raised by the private party, ~~and~~ determining whether denial was proper under § III (E) (7), and, if the appeal is denied, informing the private party of the discretionary appeal to the Executive Director of the Board of Regents.

~~i.~~ ~~The decision of the institutional chief executive officer shall be effective upon the earlier of, actual communication to the applicant, transmission of an electronic message containing~~

~~the written denial to the applicant or deposit of the written denial in the United States mail.~~

~~g.h.~~ After exhausting institutional appeals, the private party may appeal the determination of the institutional chief executive officer by submitting a written appeal to the Executive Director of the Board of Regents within ten (10) working days from the effective date of the institutional chief executive officer decision. Such an appeal shall include the application, the denial, the appeals and decisions exchanged at the institutional level, and the required appeal form.

~~h.i.~~ The Executive Director of the Board of Regents shall have ~~fifteen~~ (10) working days after receipt of such an appeal to review the appeal and its documentation and to determine whether to attempt to mediate a resolution. Within ~~fiveten~~ (5) working days thereafter, the Executive Director shall either issue a preliminary recommendation or refer the matter to a hearing examiner to determine whether the matter presents contested issues of material fact warranting a hearing or whether denial was proper under § III (E) (7) as a matter of law.

- i. If the Executive Director issues a preliminary recommendation that would deny the private party relief, the private party shall be allowed ten (10) working days from the transmission or deposit in the mails of the Executive Director's written response to provide reasons why that response should not become final. The recommendation of the Executive Director and any responses by the private party will be forwarded to the Board at the next regularly scheduled meeting.
- ii. If the Executive Director appoints a hearing examiner using the contested case proceedings pursuant to SDCL ch. 1-26, the hearing examiner shall contact the institution and the private party within ten (10) working days from the date of appointment to schedule any necessary exchanges of authorities, hearings or evidentiary hearings.

~~All parties to the dispute have the right to obtain witnesses and present evidence. The institution will cooperate with the hearing examiner in securing witnesses and in making~~

~~available specifically identified and relevant documentary and other evidence requested by the private party, to the extent not limited by contract or law. The parties to the grievance will have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the hearing examiner determines that the interest of justice requires admission of their statement, then the hearing examiner will arrange for a deposition. The hearing examiner may grant continuances when requested by either party to enable either party to investigate evidence, or for any other reason deemed appropriate. The hearing examiner will keep a record of the proceedings.~~

~~a. The hearing will not be conducted under strict rules of legal evidence and is not a contested case. Every possible effort will be made to obtain the most reliable evidence.~~

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

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

j. Appeals from the decision of the Board ~~will be~~are governed by SDCL ch 1-26.

SOURCE: BOR, August 2007; BOR, April 2009.