

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Prevention of, Dating Violence, Domestic Violence Sexual Assault and Stalking

NUMBER: 1:17.1

1. State and federal policies proscribe dating violence, domestic violence, sexual assault and stalking, often treating such actions as criminal offenses. These forms of misconduct interfere with the ability of victims to realize the benefits of the educational, cultural and social programs offered by the universities and special schools. Any student, employee or other person participating in institutional activities or using institutional facilities who engages in conduct that would constitute dating violence, domestic violence, sexual assault or stalking, as defined in this policy, or sexual assault, domestic abuse or stalking as defined under South Dakota law, in circumstances that implicate the person's fitness to study, work, participate in the functions or use the facilities at the institution may be expelled, terminated, denied further participation in institutional programs or use of institutional facilities, or otherwise disciplined, upon notice and opportunity to be heard. The decision to pursue disciplinary charges of dating violence, domestic violence, sexual assault or stalking will not preclude pursuit of additional, related charges arising from the same facts.
2. Each institution will review reports of such conduct to determine whether the employee or student be disciplined, and each institution will establish programs designed to help prevent dating violence, domestic violence, sexual assault or stalking;
 - A. by holding perpetrators accountable for their conduct;
 - B. by encouraging victims to report incidents; and
 - C. by informing students, staff and visitors of:
 - 1) Board policies proscribing, dating violence, domestic violence, sexual assault or stalking, including procedures compliant with Board Policy 1:18 to enforce those policies;
 - 2) strategies individuals may use to protect themselves;
 - 3) contact information for institutional officials responsible for investigating reports of, dating violence, domestic violence, sexual assault or stalking;
 - 4) institutional resources to assist in reporting incidents and preserving evidence; and

- 5) institutional and community resources to assist victims.
3. As used in this policy,
 - A. Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - 1) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - 2) For the purposes of this definition,
 - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - b) Dating violence does not include acts covered under the definition of domestic violence.
 - B. Domestic violence means
 - 1) a felony or misdemeanor crime of violence committed
 - a) By a current or former spouse or intimate partner of the victim;
 - b) By a person with whom the victim shares a child in common;
 - c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
 - e) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
 - 2) For purposes of this section violent crimes are determined under the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program, which classifies four offenses involving involve force or threat of force as violent crimes: murder and nonnegligent manslaughter, rape,

robbery, and aggravated assault, as set forth in 34 C.F.R. part 668 Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program:

- a) Murder and Nonnegligent Manslaughter means the willful (nonnegligent) killing of one human being by another.
- b) Rape means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- c) Robbery means the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence or by putting the victim in fear.
- d) Aggravated Assault means an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

C. Sexual assault means any offense that constitutes rape, fondling, incest, or statutory rape:

- 1) Rape has the same meaning as given above in § 3(B)(2)(b).
- 2) Fondling means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- 3) Incest means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by SDCL § 25-1-6, which provides that:

Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts

and nephews, and between cousins of the half as well as of the whole blood, are null and void from the beginning, whether the relationship is legitimate or illegitimate. The relationships provided for in this section include such relationships that arise through adoption.

- 4) Statutory Rape means sexual intercourse with a person who is under the statutory age of sixteen.

D. Stalking means:

- 1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a) Fear for the person's safety or the safety of others; or
 - b) Suffer substantial emotional distress.
- 2) For the purposes of this definition:
 - a) Course of conduct means two 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.
 - b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

E. Consent may be implied from the facts and circumstances surrounding the commission of an act. Consent will not be found where an act has been done through the use of force, coercion, or threats of immediate and great bodily harm. Submission does not equal consent, and to establish consent, a party charged must utterly negate any element of force, coercion, or threat. Consent, once given, may be retracted. Consent will not be found under any of the following circumstances:

- 1) if the victim is less than thirteen years of age; or
- 2) through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or

- 3) if the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
 - 4) if the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
 - 5) if the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.
4. To the extent that this policy is intended to implement protections arising under the criminal law, amendments to those underlying statutes will be deemed to have been incorporated hereto on the effective date of such amendments.
 5. For purposes relating to the annual security report required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC § 1092(f)), conduct constituting Dating Violence, Domestic Violence Sexual Assault and Stalking under § 3 of this policy shall be reported as crime, irrespective of its treatment under South Dakota law.
 - A. For purposes of its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, the South Dakota criminal law classifications align with the definitions set out in § 3 of this policy as follows:
 - 1) Consent is defined as set forth in § 3(E) above;
 - 2) Dating violence includes domestic abuse as defined in SDCL ch 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are not cohabiting and who have never cohabited;
 - 3) Domestic violence includes domestic abuse as defined in SDCL ch 25-10 that occurs between persons involved in a romantic relationship as defined in SDCL § 25-10-3.2 who are cohabiting and who have cohabited;
 - 4) Sexual assault includes rape as defined in SDCL § 22-22-1; sexual contact with a minor as defined in SDCL § 22-22-7; sexual contact as defined in SDCL § 22-22-7.1 without consent as set forth in SDCL § 22-22-7.4 or with a person incapable of consenting as set forth in SDCL § 22-22-7.2; and attempts to commit such offenses as defined in SDCL § 22-4-1; and
 - 5) Stalking includes stalking as defined in SDCL ch 22-19A.

SOURCE: BOR, December 2013; BOR, June 2014; BOR June 2015.