SOUTH DAKOTA
BOARD OF EDUCATION STANDARDS

# South Dakota Board of Education Standards Policy and Rules–

December 1988 - Revised: 11/15/04, 10/01/2013, 5/15/2017 (effective July 1, 2017), 01/28/2019, 10/25/2021, 01/22/2024.

**South Dakota Board of Education Standards--General**

**1.0** The South Dakota Board of Education Standards (SDCL 1-45-6.1) shall consist of seven members appointed by the Governor, with the advice and consent of the Senate, to four-year terms expiring on December 31 of the fourth year. Vacancies arising from reasons other than the natural expiration of a term shall be filled and ~~served only through the unexpired portion of the term~~served as provided by law.

**Commented [AL1]:** The original language is direct from the statute. The proposed language doesn't add or change anything.

**1.1** New Board members shall be provided access to copies of the Board policies, administrative rules and statutes pertaining to education, Board minutes, and the current Educational Directory. A tour and orientation of department facilities shall be arranged at the convenience of new Board members as requested.

1.2 At each annual organization meeting the ~~entire~~ Board shall review the Mission, Policy and Rules, establish the Annual Focus Areas, overview of administrative rules and statutes pertaining to education, and calendar of meeting dates. The Board shall also review the next cycle of Standards up for review and may make any initial general comments about changes they would like considered by the Standards committee. At the last scheduled meeting of the year the Board should review the Annual Focus Area and its success and shortcomings with matters to be considered for the next year's Annual Focus Area.

**1.**3~~2~~ The Board may maintain membership in the National Association of State Boards of Education (NASBE). The membership and payment of membership dues shall be reviewed on an annual basis. Members of the Board are encouraged to attend the meetings of NASBE as appropriate.

**1.**4~~3~~ The law provides for the maximum salary or per diem compensation and allowable expense reimbursement that may be paid to members of the Board (SDCL 4-7-10.4).

**1.**5~~4~~ Board members shall be eligible for per diem for all Board meetings, committee assignments or educational events when representing the Board. The President and Secretary must authorize such assignments and attendance at events ~~and shall notify the Secretary of such authorization~~. All out-of-state travel requests must be approved in advance by the Secretary of the Department of Education ("Secretary"). Per diem payments shall be made as long as budgetary considerations will allow.

**1.**6~~5~~ The Board shall comply with all open meetings and public records requirements of South Dakota law.

**Board Officers**

**2.0** The officers of the Board shall be the President and Vice President. The Secretary shall be the executive officer of the Board.

**2.1** At the first meeting of each year, the members of the Board shall elect from their members a President and Vice President to serve ~~for that calendar year~~until the successor is elected.

**2.2** The Secretary shall chair the meeting during the election of officers.

**2.3** The President shall preside at meetings of the Board. The President shall supervise all business and affairs of the Board unless otherwise delegated to another member or members or to personnel in the Department. The President shall sign such instruments as the Board has authorized to be executed and shall perform all other duties as may be prescribed by the Board.

**2.4** The President or a designee shall be the spokesperson for the Board. The President may direct the Secretary to issue information or press releases on behalf of the Board. ~~The President shall represent the Board and work with the Governor's Office and Secretary in developing any policy or legislation which will go before the Legislature.~~ The Secretary and President shall work together to keep members advised of material events and developments relating to education issues.

**2.5** A majority (four) of Board members shall be a quorum for the transaction of business. To take any official action, the affirmative vote of four members of the Board shall be required.

**2.6** In the absence of the President, or inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of the President. In the absence of the President and the Vice President, the members present shall elect an acting president from the members present to conduct the meeting. The Secretary shall preside over the election.

**2.7** In the event that an officer cannot serve or is removed from office, the following actions shall occur to assure continuity of leadership of the Board:

**a.** In the event of a vacancy in the Board presidency, the Vice President fills the unexpired term.

**b.** In the event of a vacancy in the Board vice-presidency, an election is held at the next meeting of the Board to fill the unexpired term.

**c.** In the event of vacancies in both the presidency and vice-presidency, the Board shall elect officers at the next meeting to fill the unexpired terms of those offices.

**d.** A two-thirds majority vote of the Board may remove the President, Vice President, or both from office. The office(s) shall be filled in accordance with the provisions of this section.

**Board Meetings**

**3.0** Meetings of the Board shall be conducted pursuant to Robert's Rules of Order Newly Revised (~~11~~12th ed.) or the most up to date edition, whichever is later, to the extent that these rules are applicable and not inconsistent with Board policies. Regular meetings shall be held ~~as scheduled under Rule 3.1 which scheduled meetings may be changed or canceled for good reason when authorized by the President, Vice President and Secretary. no less than four times per calendar year~~. Special meetings may be held at the call of the President, or in the President's absence a majority of the Board, or at the call of the Secretary.

**Commented [AL2]:** Keep original language. It's direct from statute.

**a.** The President, Vice President, or other such member of the Board as may be presiding, may discuss any subject and vote on motions. If the presiding officer wishes to place a motion, the officer must relinquish the chair to another member.

**b.** Every member or other person desiring to speak shall be recognized by the presiding officer before speaking

**c.** A member, once recognized, may not be interrupted while speaking unless it is to call the member to order. If a member is called to order, that member may not speak until the question of order is determined; if found to be in order, the member may proceed.

**d.** Members may request to have the reason for their votes entered in the minutes.

**e.** While the Board is in session, the members shall preserve order and decorum, and no member shall by conversation or otherwise delay or interrupt the proceedings of the Board. The members shall observe the rules of procedure specified above.

**f.** The Secretary or the Secretary's designee shall be the parliamentarian.

**g.** The above procedures shall apply to all committees of the Board, if any.

**3.1** The Board year shall begin January 1 and end on December 31. No later than at the last meeting of each year, the Board shall schedule a minimum of four~~six~~ regular Board meetings for the coming year. At the first meeting of each year, the Board shall organize by electing and installing officers.

**Commented [AL3]:** Keep 4. While we generally have 6 meetings a year, I can't predict when they will be needed and want to avoid frequence cancellation/postponing meetings.

**3.2** All official acts of the Board relative to motions or rules shall become effective at the time of such passage unless otherwise expressly provided therein.

**3.3** The amendment of Board policy and rules requires an affirmative vote of at least five Board members.

3.4 Whenever a new or amendment to an administrative rule is proposed. It shall be first presented at a "First Reading" to the Board. If the Board determines that the matter is deserving of further consideration it may have further discussion and then the Board may set the matter for

**Commented [AL4]:** We do not have the staff, resources, or time for first reads. None of other boards or commission conduct first reads. Proposed to delete 3.4.

a public hearing with notice and procedures as required by law. Prior to the hearing the draft rule shall be submitted for review and drafting amendments to the Legislative Research Council. After such hearing the Board may amend such proposal prior to voting on its adoption. If approved, the Secretary shall prepare the matter for submission to the Interim Rule Review Committee (IRRC) as required by law. If the IRRC reverts the rule back, the President, Vice President, and Secretary shall promptly decide if the rule should be brought before the Board for reconsideration in the time and manner as prescribed by law. In the event that reconsideration is desired the President shall call a Special Meeting for such consideration. If at any time after the First Reading and prior to the adoption of a rule, the party that originally proposed the rule desires to recall it from consideration by the Board, if approved by the President and Vice President the matter may be recalled and any scheduled public hearing or further consideration shall be cancelled.

3.5 All Rules or Standards once presented to the Board shall be presented in a "red lined" format that easily shows the existing text being deleted and the new text being added. In the same manner the Board may amend such items at any time however normally for multi-hearing items (Standards) all proposed amendments not earlier adopted would be considered by the Board after the close of the last hearing. Again such amendments will be presented in a "blue line" manner so that the proposed amendment text is clearly observable in the context of the Rule or Standard. Throughout the Standards hearing process the Secretary may present changes to the Board that the Secretary deems meritorious based upon the testimony presented to date. Any such changes shall be clearly noted for Board consideration and staff shall also tract the testimony given and recommend to the Board the merits of the particular or grouping of similar such comments.

**Commented [AL5]:** Our current practice is to provide redlines to the extent we can. When a document is substantially different or replaced, it would be extremely difficult to read if it was a redline edit. Proposed to delete 3.5.

**Commented [AL6]:** The Department and state agencies do not utilize blue line edits and would conflict with LRC requirements.

3.6 Hearings. ~~Hearing presenters~~Testifiers shall be register into ~~Pro and Con~~ proponent and opponent positions and be granted a uniform amount of time as authorized by the Board or President provided that such time may be extended by consent of the Board and any questions of the Board or staff will not be counted against said time.~~-~~ The President may adopt such other appropriate~~-~~ reasonable uniform rules of procedure for the hearing.

**Executive Officer**

**4.0** The Secretary shall be the executive officer of the Board. The Secretary or the Secretary's designee shall keep accurate minutes of all meetings of the Board and maintain all the records necessary to operate and administer the business of the Board.

**4.1** The Secretary or the Secretary's designee shall attest to the minutes as a record of the Board meeting.

**4.2** **Legal** n~~N~~otice of all meetings of the Board shall be made by the Secretary or the Secretary's designee by written notice to the media and other persons who have requested such information.

**4.3** The Secretary or the Secretary's designee shall record all official actions taken at the meetings of the Board.

**Procedure For Preparing The Agenda For State Board Meetings**

**5.0** The Secretary shall coordinate the agenda preparation and together with the President ~~the final proposed agenda will be presented to the Board for consideration~~Prior to final preparation ~~of the proposed agenda, items for the agenda and the order of the items on the agenda shall be cleared with the President~~. ~~The order of the agenda may be rescheduled or added to by action of the Board.~~

**Commented [AL7]:** The board can review and change the agenda prior to adoption.

**5.1** At least seven days prior to the date of the meeting, the proposed agenda, with supplementary material, shall be made available to the members of the Board. Nothing herein shall prevent the amendment of the agenda or addition of supplementary materials within the time limits allowed in SDCL Chapters 1-25 and 1-27.

**Code of Conduct and Conflicts of Interest**

**6.0 Purpose**

The purpose of this code of conduct and conflict of interest policy ("code") is to establish a set ofminimum ethical principles and guidelines for members of the Board when acting within their official public service capacity. With the exception of those under the purview of the Unified Judicial System, this code applies to all appointed and elected members of state authorities, boards, commissions and committees,

**6.1 Conflict of Interest for Board Members**

Board members may be subject to statutory restrictions specific to this board found in state andfederal laws, rules, and regulations. Those restrictions are beyond the scope of this code. Boardmembers should contact the appointing authority for this board or the attorney for the Board forinformation regarding restrictions specific to the Board.

**6.1.a General Restrictions on Participation in Board Actions**

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing orpotential employment relationship with a party involved in a proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in anofficial action shall depend on whether or not the action is administrative, quasi-judicial, or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of a licenseor permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member's

interest or relationship creates a potential to influence the member's impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future ineffect. An example is rule-making. If the official action involved is quasi-legislative in nature, aBoard member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to thedisposition of the action.

Administrative actions involve the day-to-day activities of the Board. Most of the administrative official actions of the Board are done through the Board's administrative staff. To the extent thatBoard members are involved, the conflict of interest concern most frequently arises in the area ofstate contracting which is addressed in more detail in Policy 6.1.b. If issues arise that are not directly addressed by this code, a Board member should consult with the attorney for the Board.

"Official action" means a decision, recommendation, approval, disapproval, or other action which involves discretionary authority. A Board member who violates any of these restrictionsmay be subject to removal from the Board to which the member is appointed.

**6.1.b Contract Restrictions**

There are federal and state laws, rules, and regulations that address conflict of interest for Board members in the area of contracts. A Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in SDCL Chapter 3-23 and are required to make an annual disclose of any contract in which they have or may have an interest or from which they derive a direct benefit. This Board issubject to the requirements of SDCL Chapter 3-23. The restrictions further apply for one year following the end of the Board member's term.[1]

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded, or administered the contract. With theexception of employment contract, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to the Board members who serve without compensation or who are only paid a per diem. See SDCL 5-18A-17 to 5-18A-17.6.[2]

[1] See also the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: http://atg.sd.gov/legal/opengovernment/authorityboardcommission.aspx.
[2] See also the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at: http://bhr.sd.gov/forms/.

Other federal and state laws, rules, and regulations may apply to specific Boards. For general questions regarding the applicability of SDCL Chapter 3-23 or other laws, a Board member maycontact the attorney for the Board. Because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

**6.1.c Consequences of Violations of Conflict of Interest Laws**

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowinglyuses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See SDCL 3-16-7, 5-18A-17.4 and 22-30-46.

**6.1.d Retaliation for Reporting**

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation orsuspected violation of a law or rule, an abuse of funds, or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. SDCL 3-16-9 and 3-16-10.

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See SDCL 20-13-26.

**6.2 Anti-Harassment/Discrimination**

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex, pregnancy, age, ancestry, genetic information, disability, or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or anotherBoard member. This prohibition against harassment and discrimination also encompasses sexualharassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors,and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

Unwelcome physical contact such as kissing, fondling, hugging, or touching;

Demands for sexual favors; sexual innuendos, suggesting comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions,or persistent unwanted courting;

Swearing, offensive gestures, or graphic language made because of a person's race, color,religion, national origin, sex, age, or disability;

Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or

Calendars, posters, pictures, drawings, displays, cartoons, images, lists, emails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age, or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

**6.3 Confidential Information**

Except as otherwise required by law, Board members shall not disclose confidential informationacquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

**6.4 Reporting of Violations**

Any violation of this code should be reporting to the appointing authority for the Board memberwho is alleged to have violated the code.

(Code adopted from the South Dakota Board of Internal Control Code of Conduct and Conflictof Interest Policy for use by state board members, promulgated in June 2018 pursuant to SDCL 1-56-6.)

~~**No Changes hereafter.**~~