**BOARD OF REGENTS**
306 EAST CAPITOL AVENUE, SUITE 200
PIERRE, SOUTH DAKOTA 57501-2545
(605) 773-3455
www.sdbor.edu

OFFICE OF THE EXECUTIVE DIRECTOR

October 9, 2025

TO: University Presidents
FROM: Nathan Lukkes, BOR Executive Director & CEO
RE: Employee Speech

Our office has received several questions from employees regarding the application of SDBOR Policy as it relates to employee speech, whether in their private or professional capacity. While many would like to know exactly what can or cannot be said in what settings, the answer is not a bright line rule, but rather a framework to guide the standards and expectations that accompany employment at our universities.

When engaging in the classroom, SDBOR's Academic Freedom and Responsibility Policy provides clear guidance on the expectations and parameters (SDBOR Policy 1.6.1 Section C.1.2):

> Faculty members are entitled to freedom in the classroom in the discussion of their subject and in the presentation of various scholarly views, including controversial matter, which is relevant to a given course and course objectives. While controversy is at the heart of free academic inquiry, faculty members should avoid persistently including material that does not relate to a given course or course objectives, or that otherwise detracts from the underlying course objectives. In the many instances where there are differing and even controversial scholarly views, divergent viewpoints and materials should be presented, studied, analyzed and debated to challenge and support students in developing their ability to think critically, form opinions and draw conclusions.

With the responsibility entrusted in our employees by the public comes "special obligations", even when engaging outside the classroom. While the phrase "special obligation" is not explicitly defined in SDBOR Policy, this responsibility to students and the public is best described in the Statement Concerning Faculty Expectations (SDBOR Policy 4.4.3 Section C.5):

> Universities play a special role in preparing students to lead the complex social organizations through which businesses and professions operate and through which free people govern themselves. Students must be taught, and they must be shown through the example given by institutional employees, that members of stable, effective and prosperous social organizations observe norms of conduct under which all participants treat one another civilly and carry out their respective tasks in a constructive and informed manner. Complex social organizations derive their strength from the cooperation of those who participate in them. By virtue of their special role in preparing future generations of leaders, universities have a particular concern with conduct that destroys the bonds of cooperation and common purpose on which society rests by demeaning members of the community, and such conduct cannot be tolerated in an institution whose very purpose is to shape the skills and conscience of the rising generations.

Similarly, language from the SDBOR's Academic Freedom and Responsibility Policy (SDBOR 1.6.1 Section C.1.3) reiterates the special obligations placed upon faculty in accordance with their special position in the community:

> As learned people and as educators, [faculty] should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, show respect for the opinions of others and make every effort to indicate when they are not speaking for the institution.

While faculty must generally be free to engage as private citizens in speech on matters of public concern, our policies have long recognized that this freedom is not limitless. SDBOR Policy 4.4.8, Section C.5.14 directs that a faculty member may be subject to remediation for failing to uphold their special obligations to students, co-workers, and the public generally. Under the policy, speech that undermines these obligations may interfere with or disrupt institutional operations and constitute remediable unprofessional conduct.

In an attempt to avoid conflict between university operations and employee speech, the following guidance is offered:

1. Employees must first and foremost act in accordance with their duties and responsibilities defined in policy. Employees must at all times set an example for students and the public by demonstrating respect for the opinions of others, treating others civilly, and carrying out their respective tasks in a constructive and informed manner.
2. Employees should be cognizant of how their comments may be perceived in light of the present social context, and whether their comments will be viewed in association with their position at the university. In times when trust in public institutions or civil discourse in greater society are low, the detrimental impact to the university of a faculty member publicly deviating from their higher standards of civil discourse is at its greatest.
3. The place or medium for the speech is also relevant. Comments posted in an online forum including social media have the potential to reach a significant portion of the public, thus presenting a greater opportunity for disrespectful, demeaning, and uncivil speech to have a detrimental effect on university operations. Employees should take great care in distancing their private speech from that of the university or their position with the university.
4. The way you say something matters. A potentially unpopular opinion, thoughtfully and respectfully delivered, will likely not violate policy. Name-calling, vulgarity, profanity, rudeness, and words that demonstrate a disregard for societal norms of civil and respectful human interaction posted online is more likely to disrupt the efficient operation of a university or undermine the public trust.

Faculty and staff across the system engage in and model civil and respectful discourse on a host of difficult topics every day, and the public places great trust in this occurring. However, a majority of the public never gets the opportunity to sit in a classroom and witness this incredible work of our employees. As a result, the public is often left judging the quality of informed and civil discourse within our universities in large part by the public utterances of our faculty and staff. We would ask that faculty and staff be ever mindful of these perceptions and the impact your actions can have on the institution.