

**Sisseton-Wahpeton Oyate  
Codes of Law  
Chapter 77 – Research Code**

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## **Title I: General Provisions**

### 77-01-01: Title

The title of this code is the Research Code of the Sisseton-Wahpeton Oyate. This title may be cited as the "Research Code."

### 77-01-02: Authority of Tribal Government

The Sisseton-Wahpeton Oyate is the inherent sovereign authority that enacts and enforces this Code. Actions under this Code affect the political integrity, economic security, health, and welfare of the Sisseton-Wahpeton Oyate.

This Code is adopted pursuant to the Constitution and Bylaws of the Sisseton-Wahpeton Oyate, in the exercise of ARTICLE III, Section 1, which states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Sections 1 (g) and (h), state that, the Council shall have the ability to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; and to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.

### 77-01-03: Legislative Findings

The Sisseton-Wahpeton Oyate Tribal Council recognizes the value of research to the Sisseton-Wahpeton Oyate, to Native American people, and to society in general; and accepts that there is responsibility to bear a fair share of the burdens and risks of research along with other communities. However, historically, research has been conducted with Native populations that presented undue risks or harm to the individuals, community or resources, or that misrepresented information regarding language, culture, and traditions and/or have deviated from the original intent of the study outside of the approved protocols. Given this history, the Sisseton-Wahpeton Oyate Tribal Council recognizes the need for research oversight to protect the people and resources of the Sisseton-Wahpeton Oyate.

### 77-01-04: Purposes

The purpose of this Code is to define tribal research policies, and to establish a means by which tribal research policies will be administered by the Sisseton-Wahpeton Oyate and to provide for general procedures by which the Local Research Review Board will grant permission to researchers to conduct research on the Lake Traverse Reservation. This Code provides for the following:

- (a) The creation of a centralized Tribal Research Office tasked with administering this Code, supporting the activities of the LRRB and functioning as a resource for the community.
- (b) The creation of a specific and formal authorization body, a Local Research Review Board (LRRB), to provide protection of the Sisseton-Wahpeton Oyate's Tribal Individuals and resources.
- (c) Protection of the individual and collective rights of the Oyate in regards to property, trademark, copyright, publicity and privacy.
- (d) Enforcement of this Code.

77-01-05: Scope and Nature of Code

- (a) This Code shall apply to all research and data gathering conducted on the Lake Traverse Reservation unless specifically excluded in this section. Research and data gathering that is grant funded is required to adhere to tribal laws in addition to Common Rule policies.
- (b) This Code shall apply within the jurisdiction of the Sisseton-Wahpeton Oyate. It may also be enforceable outside the jurisdiction of the Sisseton-Wahpeton Oyate as applicable law permits with respect to research conducted on the Oyate's lands or research using materials as to which the Sisseton-Wahpeton Oyate has claim of ownership.
- (c) This Code shall apply to all persons subject to the civil jurisdiction of the Sisseton-Wahpeton Oyate, including members and non-members, Native Americans and Non-Native Americans and other corporate, governmental, and/or educational institutions who or which might undertake to conduct research on the Lake Traverse Reservation. This Code does not apply to individuals who participate in research off the Lake Traverse Reservation outside the parameters of this Code.
- (d) This Code may apply to research or surveys when it pertains to human subjects as defined in Sisseton-Wahpeton Oyate Tribal Code Chapter 73: "Cultural Resource Protection Act" (CRPA). Research of a cultural, historic, and/or archeologic nature shall be governed by CRPA. "Cultural Research includes any endeavor, by means of investigation and study of a subject, whether to discover new or collate old facts or hypotheses on a cultural subject, an ethnographic or anthropological study, including but not limited to basic data collection, studies of or incorporating traditional knowledge or classification systems (e.g. studies of medicinal properties of plants), documentary films, archaeology, linguistics and ethno-historical accounts." Further definition includes "undertaking or action" as limited to "any project, activity or program located on protected lands that may potentially cause effects to cultural resources, archeological resources, burial items, sacred items or spiritual sites..."

- (e) The Code may apply Administrative Review to non-human subject research information gathering projects conducted by Sisseton-Wahpeton Oyate Tribal Entities. Academic research conducted by employees of any Tribal entity, to include educational institutions, businesses, agencies and governmental subdivisions, must comply with the provisions of the Code as a researcher.
- (f) This Code applies either to public health practice or activity that collects information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, or vital events such as birth or death. Additionally, any information gathered through routine public health practice must be reported to the Tribe as outlined in the Research Policies and Procedures manual.
- (g) This Code applies Exempt-Limited Review to all non-human subject research practices and activities held within the Lake Traverse Reservation, and/or are about the Lake Traverse Reservation. This Code applies if identification of the reservation, whether directly or indirectly, may occur from the data collected and/or the products of the research.

## **Title II: Definitions**

- (a) “Academic Research” means research carried out to obtain educational qualifications, to further an academic career at an institution of higher learning, or for scientific advancement.
- (b) “Assent” means a child’s affirmative agreement to participate in research.
- (c) “Authorized Officials” means the Sisseton-Wahpeton Oyate Research Specialist or the executive committee or their designee.
- (d) “Biological Samples” means, but is not limited to, bacteria and other microorganisms, plant, animal, or any human biological materials, genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.
- (e) “Broad Consent” is a new term introduced by the new Common Rule, the Final Rule. Its intent is to allow researchers to obtain participant consent to allow their data to be used in unspecified secondary data studies. The Sisseton-Wahpeton Oyate has decided not to implement Broad Consent.
- (f) “Common Rule” means the federal regulation for human subjects protections 45 CFR Part 46 (2018-07-19), including the revisions that went into effect on January 21, 2019.

- (g) “Conflict of Interest” means any situation in which a Local Research Review Board (LRRB) Member is in a position to exploit his/her professional or official capacity in some way for the LRRB Member’s personal benefit in financial gains or in-kind gains in the form of goods, commodities or services.
- (h) Exempt-Limited Review means conducting a limited review to make the determinations required by the Common Rule to assure there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.
- (i) Expedited Review means certain types of research involving no more than minimal risk and minor changes to research previously approved by the full committee.
- (j) “Final Rule” means the Common Rule revisions that went into effect on January 21, 2019.
- (k) “Human Subject” means a living individual about whom a researcher conducting research obtains data through intervention or interaction with the individual, or identifiable private information.
- (l) “Information Gathering” means the collection of information that occurs generally within each Tribal Program in accordance with their program mission or delegated responsibilities.
- (m) “Informed Consent” means a prospective subject’s voluntary agreement, based upon full disclosure and adequate knowledge and understanding of relevant information, to participate in research or to undergo a diagnostic, therapeutic, or preventative procedure. In giving informed consent, the subject may not waive or appear to waive any legal rights to applicant researcher, the funding source, or agent. Additionally, the subject may not release or appear to release the applicant researcher, the funding source or agent from liability from negligence.
- (n) “Interactions” may be communication or interpersonal contact between the investigator (or research team) and an individual. Examples include interviews, questionnaires, surveys, observations, manipulations of subject behavior, diet, or environment, physical measurements, and specimen collection.
- (o) “Intervention” may be a physical procedure, educational curriculum or manipulations of the environment.
- (p) “Local Research Review Board” or “LRRB” means the Sisseton-Wahpeton Oyate’s formal body whose function is to review all research proposals.
- (q) “Products of Research” means publications (including but not limited to reports, studies, articles, theses, books, manuscripts, sound recordings, film and video, media

interviews, and computer databases), research posters, power points, field notes, illustrations, photographs, sound recordings, collected material artifacts, replicas, and specimens, including any derivative forms they may take such as translations, and communications through electronic media.

- (r) “Protocol” means the formal design or plan of a research activity. The protocol includes a description of the research design or methodology to be employed, the eligibility requirements for prospective treatment groups and controls, the treatment regimen(s), and the proposed methods of analysis that will be performed on the collected data.
- (s) “Publication” is the dissemination of any information, data, or compilation, whether confidential or aggregate, by any method or media, including verbal, written or electronic communications, including periodic or final reports required by a grantor.
- (t) “Public Health Practice” means the collection and analysis of identifiable health data by a public health authority for the purpose of protecting the health of a particular community.
- (u) “Research” is a systematic investigation (including observational studies, interview or survey studies, group comparison studies, test development, and interventional research) designed to develop or contribute to generalizable knowledge utilizing a predetermined method for studying a specific topic, answering a specific question(s), testing a specific hypothesis(es), or developing theory.
- (v) “Researcher” means any person or entity, such as a corporation, government – whether state or federal, or educational institution, which conducts research, as defined herein, within the territorial jurisdiction of the Sisseton-Wahpeton Oyate.
- (w) “Reservation” means all lands within the exterior boundaries of the Sisseton-Wahpeton Oyate which are under the jurisdiction of the Tribe, ancestral lands where the tribe holds interest, and such lands as may hereafter be obtained or added to the jurisdiction of the Tribe, regardless of whether such after-acquired lands are in fee-status or trust-status.
- (x) “Single IRB” means the IRB of record performing review on behalf of one or more institutions. The Sisseton-Wahpeton Oyate has decided that all research protocols concerning the tribe require review per SWO LRRB policies and procedures regardless of review required by any other external research review entity.
- (y) “Sisseton-Wahpeton Oyate” means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

- (z) “Tribal Council” means the governing body of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
- (aa) “Tribal Entity” means an arm of the Tribe formed under Tribal Law as an instrumentality, agency, unincorporated department or division, or business entity that is wholly owned by the Tribe or tribal subsidiaries, including, without limitation, a corporation or limited liability company.
- (bb) “Tribal Individuals” includes Tribal members, their descendants and ancestors, and other individuals, families and people residing within the exterior boundaries of the reservation.

### **Title III: Research Administration**

#### **77-03-01: Research Office**

The Sisseton-Wahpeton Oyate hereby establishes a Research Office that will be overseen by the Research Specialist to administer this Code.

#### **77-03-02: Research Specialist**

The Research Specialist shall be an individual who meets the qualifications of the position description required to oversee the activities of the Research Office and administer this Code.

#### **77-03-03: Responsibilities of the Research Specialist**

The Research Specialist will be responsible for the following duties:

- (a) Catalogue and monitor past and current research and Sisseton-Wahpeton Oyate data.
- (b) Assess the current state of data.
- (c) Develop and maintain data storage plans and databases.
- (d) Develop and promulgate policies and procedures under which the Research Office and Local Research Review Board shall operate subject to the Sisseton-Wahpeton Oyate laws.
- (e) Negotiate with researcher(s) for additional and/or revised procedures, methodologies, and approaches to research and/or publications as needed or recommended by the LRRB.
- (f) Monitor ongoing research and enforce this Code.



- (g) Establish, conduct and administer day-to-day Research Office activities.
- (h) Conduct public hearings if any research proposal may involve subjects of particular concern, controversy, or sensitivity to the Sisseton-Wahpeton Oyate in order to obtain feedback from Tribal Individuals.
- (i) Coordinate with other appropriate Sisseton-Wahpeton Oyate boards and committees and other Institutional Review Boards, cultural boards and committees as needed.
- (j) Provide research information, appropriate to the audience, to the community via news articles, website updates and/or other publications as needed.
- (k) Meet formally and informally with tribal leaders, tribal health program administrators and other stakeholders to ensure tribal representatives have a venue to provide information and gather input to research activities.
- (l) Administer research software by developing policies and procedures for its use. Train and/or provide training manuals to LRRB members and researchers on appropriate use of the software.
- (m) Assess and update Code in accordance with judicial procedures.
- (n) Maintain monthly budget, perform invoicing and reporting as required.
- (o) Employ and supervise other research personnel as required.

77-03-04: Record Retention

- (a) The Research Office shall develop and maintain an up-to-date research database of all research projects, past and ongoing, approved and disapproved.
- (b) Records of research projects will be maintained at least ten (10) years after the Research Office receives the proposal or five (5) years after the completion or termination of the research activity, whichever is longer.

77-03-05: Research Proposal Packet

Prior to undertaking any research within the jurisdiction of the Lake Traverse Reservation and the scope of this code, Researcher must submit their research proposal and accompanying documents to the Research Office for review and approval by the Local Research Review Board.

77-03-06: Research Permit

Upon LRRB approval, all persons conducting research shall keep their research permit in their possession at all times. Use of the research permit constitutes an agreement by the researcher to submit to the jurisdiction and authority of this Code and the policies and procedures of the Research Office and does not imply endorsement of the results or products resulting from the study. The permit must be produced for inspection or surrendered upon demand by authorized officials.

77-03-07: Exemptions

The Research Specialist will review and provide a determination prior to commencement of the project, including:

- (a) Protocols determined exempt by an outside IRB or expected to meet exempt criteria according to the Common Rule, will complete an Exempt-Limited Review application.
- (b) Studies, data collection, and evaluation projects managed by Tribal entities.

77-03-08: Administrative Fees

The Research Office may assess reasonable costs associated with the review of proposals and other materials. Any monies generated are for the exclusive use of the administration of this Code. Administrative fees are subject to change and are set forth in the Research Policies and Procedure manual.

## **Title IV: Local Research Review Board**

77-04-01: Local Research Review Board Duties and Responsibilities

There is hereby established a Sisseton-Wahpeton Oyate Local Research Review Board ("LRRB"), which shall be comprised of a minimum of five (5) individuals tasked with the following duties and responsibilities:

- (a) Review all research proposed to be conducted on the Lake Traverse Reservation that is within the scope and jurisdiction of this Code,
- (b) Approve or disapprove research projects that are consistent with the terms and intent of this Code.

- (c) Suggest additional and/or revised procedures, methodologies, approaches, and language to research protocols and/or products.
- (d) Coordinate, when appropriate, with any other department or agency to ensure that the interests of Tribal programs, departments, and members are protected.
- (e) Coordinate and interact with the researcher(s) in order to ensure that the Tribe's control of all aspects of the research and the Tribe's ownership of data and information generated by such research are protected, including but not limited to any secondary data use or protocols
- (f) Review and grant approval of any research products prior to publication or presentation.
- (g) Revoke or suspend research approvals and permits should a permit holder engage in disallowed activities, fail to abide by the terms of the permit, commit fraud or misrepresentation, provide incorrect statements in the application process, or engage in activities prohibited by this Code or any other Tribal law or resolution.

77-04-02: Local Research Review Board Purposes

The Local Research Review Board will assure that research and products of research meet the following criteria:

- (a) Are consistent with the Constitution and By-Laws of the Sisseton-Wahpeton Oyate, including but not limited to, Article VII – POWERS, §1, “*(h) To promote public health, education, charity, and other services as may contribute to the social advancement of the members . . .*”, as well as to the mission, vision, and social values and practices derived from its sovereign duties and responsibilities.
- (b) Will not endanger or diminish the well-being of individuals, communities, properties, resources (physical, intellectual, or cultural), public image, or social advancement of the Lake Traverse Reservation.
- (c) Requires informed consent and assent (when applicable) by all affected individuals or their legal representatives. Are relevant, sensitive, and responsive (culturally and socially) to the Sisseton-Wahpeton Oyate research and data-collection priorities and are appropriate clinically, technically, epidemiologically and statistically.
- (d) Presents only reasonable risks in relation to anticipated benefits for the Sisseton-Wahpeton Oyate.

77-04-03: Local Research Review Board (LRRB) Conflict of Interest

- (a) Persons. No LRRB member shall participate directly or indirectly in the administration, review, and/or approval of a research project or the selection of a paid expert consultant if an actual or foreseeable conflict would be involved. LRRB members are expected to self-disclose, not only any relationships explicitly outlined herein, but also any informal personal relationships that may interfere with the member's ability to objectively carry out their duties. Such conflict would arise when a financial or in-kind interest would be gained through the research project or expert consultation in the form of goods, commodities, services, or professional advancement by:
- 1) The LRRB member.
  - 2) The LRRB member's close relatives.
  - 3) The LRRB member's business partner.
  - 4) An organization which employs, is negotiating to employ, or has any arrangement concerning prospective employment of any of the above persons.
  - 5) And other circumstances that may affect objectivity.
- (b) Disclosure. When there is an actual or foreseeable conflict under 77-04-03(a), the LRRB member must disclose the conflict in writing to the Research Specialist as soon as the fact is known to the LRRB member.
- (c) Resolution. When a conflict has been confirmed by the LRRB, the LRRB may do the following to resolve the conflict:
- 1) The LRRB may waive the conflict if there are valid reasons, in which case the waiver must be in writing, stating the reason for such a waiver; or
  - 2) Request that the conflicted LRRB member recuse himself/herself from the administration, review and/or approval of the research project.

77-04-04: Local Research Review Board (LRRB) Appeals Process

A one-time appeal for reconsideration may be requested from the LRRB when a research permit has been denied, revoked, or suspended.

- (a) The request must be submitted in writing to the Research Office within thirty (30) days after receiving notification of a denial decision or revocation/suspension.

- (b) Researcher must show good cause for the reconsideration within their appeal request. The request for reconsideration shall be deemed to have shown good cause if it:
  - 1) Presents significant relevant information not previously considered by the LRRB;
  - 2) Demonstrates that significant changes have occurred in the factors or circumstances the LRRB considered when reaching its decision; or
  - 3) Demonstrates that the LRRB failed to follow its adopted procedures in reaching its decision.
- (c) Reconsideration by the LRRB shall be conducted within thirty (30) days after receipt of the appeal request. The LRRB shall notify the appellant of the meeting time and date for reconsideration. The appellant has the opportunity to be heard.
- (d) All appeal decisions made by the LRRB are final.

#### 77-04-05: Exemptions

The Local Research Review Board will review all exemptions to the permit process established herein prior to commencement of the research project, including:

- (a) Exempt-Limited Review applications submitted in accordance with requirements of the SWO Research Office from researchers with protocols determined exempt by an outside IRB or who expect their protocol to meet exempt criteria according to the Common Rule.
- (b) Studies, data collection, and evaluation projects managed by Tribal entities who request administrative review services when required to submit official documentation stating that their study is exempt and/or for those wanting to confirm whether a study meets exempt criteria.

## **Title V: Protection of Rights**

#### 77-05-01: Ownership of Property

- (a) Sisseton-Wahpeton Oyate shall retain all ownership, property, trademark, copyright, and traditional indigenous intellectual property rights to cultural, linguistic, and historic information that is not the intellectual property of the Researcher.

- (b) Researcher shall credit Sisseton-Wahpeton Oyate, when applicable, as the appropriate source of all information used to develop their intellectual property.
- (c) Individuals on whom research will be conducted have the right to their own individual information and intellectual property that is provided to the Researcher. The statement of rights shall be in plain language. The Researcher shall provide Sisseton-Wahpeton Oyate and each individual with a statement of the individual's rights as it pertains to the information collected from the individual. Individuals retain the right to cease involvement in any research at any time.

#### 77-05-02: Copyrighted Works

- (a) Use of Sisseton-Wahpeton Oyate's copyrighted works such as literary works, musical works – including any accompanying words, dramatic works, accompanying music, pantomimes, choreography, pictorial, graphic, audiovisual, architectural, motion pictures and sculptural works and sound recordings – shall be granted on a case-by-case basis.
- (b) Sisseton-Wahpeton Oyate may permit use of its copyrighted works for the following purposes: criticism, comment, news reporting, teaching – including multiple copies for classroom use, scholarship, or research.

#### 77-05-03: Trademark

Use of Sisseton-Wahpeton Oyate's trademark(s) that identifies the Sisseton-Wahpeton Oyate as the source may be granted on a case-by-case basis. Examples include, but are not limited to, words, phrases, symbols or designs, or a combination of words, phrases, symbols or designs.

#### 77-05-04: Rights of Publicity and Rights of Privacy

All individuals retain Rights of Publicity and Rights of Privacy to the highest extent afforded by this code or applicable tribal, state or federal law. Individuals on whom research will be conducted have the right to control their own image – including, but not limited to sketches, electronic imagery or film, voice recordings and/or video recordings. Controls shall extend to a period of ten (10) years after their death unless explicitly authorized in writing.

#### 77-05-05: Biological Samples

Any researcher who seeks to collect, acquire, or analyze any biological samples must agree and abide by the following conditions with regard to research with biological materials:

- (a) The Tribe may, at any time, decide to withdraw from the research project, or any portion thereof, and request the return of all biological samples. The researcher, and any other parties, must comply.
- (b) Upon completion of the research project, or termination or cancellation of the project at any time prior to completion, the biological samples must be completely and fully returned to the possession of the Tribe.
- (c) No biological samples from this study may be released to, or used by, any other researcher(s), research institution, or any other entity, whether public or private, without the prior and fully-informed written approval of the Tribe.
- (d) If the Tribe permits any biological samples to be stored in any other locations, the researcher shall maintain at all times a complete list thereof. The list shall include a description of the sample or data, source, specific use or purpose of each item, responsible person(s) at the location, and where the item is housed (e.g., in a "gene bank" or on a specific computer). Secondary use of the samples or data are deemed new research studies and, therefore, the tribe requires a new protocol to be submitted for vetting.
- (e) Any situation where biological samples will leave the possession or control of the researcher will require a separate agreement between the Tribe and the external party in accordance with this Act.
- (f) No entity may seek to patent or commercialize any biological materials obtained from the Tribe, from the Tribe's jurisdiction, or under the authority of the Tribe. This includes genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

## **Title VI: Enforcement**

### 77-06-01: Unlawful Acts

It shall be unlawful for any person to conduct research on the Lake Traverse Reservation unless the researcher has obtained a permit as specified in this Code. Failure to obtain a permit or to abide by its terms shall result in penalties and sanctions.

### 77-06-02: Remedies

When it appears that the Researcher or other person or entity has violated the provisions of this Code or the terms of the permit, the Research Office may, with the concurrence of the

Tribal Executive Committee, petition the Tribal Court for the commencement of injunctive and equitable relief through Sisseton-Wahpeton Oyate civil proceedings.

77-06-03: Penalties

After notice and an opportunity to be heard, any person found by the Tribal Court to have violated this Code may be subjected to the following civil penalties:

- (a) Persons conducting research in violation of any section of this Code, or any permit issued under this Code, may be assessed a civil penalty not to exceed ten-thousand dollars (\$10,000) per violation. The civil penalty shall be in addition to any other damages resulting from a violation.
- (b) Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violation.
- (c) Civil actions may commence in accordance with the Sisseton-Wahpeton Oyate Rules of Civil Procedure, SWO Code Chapter 21.
- (d) If a researcher is found to be in violation of this Code, in addition to monetary fines, the civil penalty of suspension, revocation, nonrenewal, or denial of the permit, as well as denial of all future permits for conducting research on the Lake Traverse Reservation, may be applied.

77-06-04: Reporting

- (a) In addition to any other remedies and penalties considered, the Sisseton-Wahpeton Oyate Research Office, may also report research misconduct to the relevant funding agencies; their affiliated institutional and professional organizations, as applicable; and public databases established for this purpose, such as the United States Department of Health and Human Services Office of Research Integrity.
- (b) If a judgment is entered against the persons conducting the research project subject to this Code, notice of the judgment shall be given to the project's sponsoring organization and/or funding source as well as to the professional organization or licensing agency of the person conducting the research.

77-06-05: Damages

- (a) **Assessment of Actual Damages:** Any person who violates any section of this Code or any permit issued under this Code shall be liable for damages to be assessed by the Sisseton-Wahpeton Oyate Tribal Court after a hearing is conducted.



“Damages” shall be interpreted liberally by the Sisseton-Wahpeton Oyate Tribal Court to include, but not be limited to, the following:

- 1) Cost of recovery, restoration, and repair of research properties, cultural resources involved, and other work products;
  - 2) Enforcement costs associated with the enforcement of this Code;
  - 3) Cost associated with the appropriate disposition of resources;
  - 4) Such other relief that may be necessary to redress any injury suffered by the Tribe, any person, family, organization, or community resulting from the violation of this Code, and
  - 5) Attorney’s fees and costs to the prevailing party.
- (b) Assessment of Treble Damages: In addition to actual damages, the Sisseton-Wahpeton Oyate Tribal Court, in its discretion, may assess damages of up to three times the amount of actual damages.
- (c) The researcher’s funding source may be enjoined from any further research activities.
- (d) The Tribe may report the researcher and/or their funding source’s action to other tribes.

77-06-06: Forfeiture

- (a) All objects or property in the possession of any person, and obtained in violation of this Code or in violation of a term or condition of the Research Permit, shall be seized by law enforcement agents and forfeited to the Tribe for disposition.
- (b) A person may recover all such property incapacitated by paying to the Tribe the costs incurred by the Tribe in carrying out legal proceedings, and by paying all fines due for violations of Tribal Law.

77-06-07: Seizure of Security

- (a) The citing law enforcement agent shall seize such property in the possession of the alleged perpetrator, including vehicles, or equipment involved in the violation, as the enforcement program or agent deems reasonably necessary to secure payment of any fine or civil damages which may be levied upon the defendant upon conviction of the infraction.

- (b) The seized property shall be released to the owner upon timely payment of any related civil assessments.
- (c) Any seized property shall be forfeited to the Tribe if the assessment has not been paid within 60 days of the hearing at which the assessment was levied or 60 days from the final determination of any appeal taken pursuant to this Code, whichever is later.

77-06-08: Personal Jurisdiction

As to a cause of action arising under this Code, a court may exercise jurisdiction over a non-domiciliary on any basis consistent with the Sisseton-Wahpeton Oyate Codes of Law.

## **Title VII: Immunity, Good Faith, and Severability**

77-07-01: No Waiver of Immunity

No waiver. Nothing in this Code shall be construed as a waiver of sovereign immunity for the Sisseton-Wahpeton Oyate, its departments, agencies, employees, or agents.

77-07-02: Severability

If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by the Tribal Court or the Tribal Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

77-07-03: Construction

This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

77-07-04: Amendment

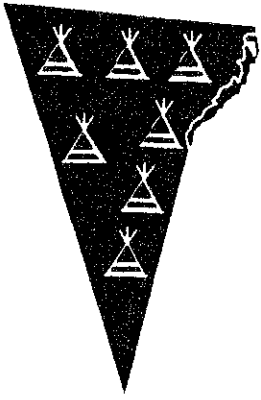
This Code may be amended only upon an affirmative vote of a majority of the Sisseton-Wahpeton Oyate Tribal Council.

77-07-05: Effect of Headings

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

77-07-06: Interpreting Definitions

Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage for the Sisseton-Wahpeton Oyate and to give this Code its most reasonable application. The words and phrases in this section are specifically defined and shall control and prevail over any other definition.



# Sisseton - Wahpeton Oyate

## LAKE TRAVERSE RESERVATION

PO BOX 509 • 12554 BIA HWY. 711  
AGENCY VILLAGE, SOUTH DAKOTA 57262-0509  
PHONE: (605) 698-3911

### TRIBAL COUNCIL RESOLUTION NO. SWO-25-003

#### Amendments to Chapter 77 – Research Code

**WHEREAS,** The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and

**WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and

**WHEREAS,** the Sisseton-Wahpeton Oyate enacted into law a Research Code, Chapter 77 on July 14, 2015 by Motion #30; and

**WHEREAS,** the Sisseton-Wahpeton Oyate now amends the Research Code, Chapter 77 as follows:

#### **77-01-02: Authority of Tribal Government**

The Sisseton-Wahpeton Oyate ~~possesses~~ is the inherent sovereign authority to that enacts and enforces this Code. Actions under this Code affect the political integrity, economic security, health, and welfare of the Sisseton-Wahpeton Oyate.

**Explanation:** LRRB reworded the first sentence from passive to assertive voice. The second sentence separated “health and welfare” by adding a comma behind “health”. 77-01-05: Scope and Nature of Code

(a) This Code shall apply to all research and data gathering conducted on the Lake Traverse Reservation unless specifically excluded in this section. Research and data gathering that is grant funded is required to adhere to tribal laws in addition to Common Rule policies.

**Explanation:** Added wording to confirm oversight of both HSR and NHR. The second sentence is added to cover grants with research and data collecting projects.

(d) This Code may apply to research or surveys when it pertains to human subjects as defined in Sisseton-Wahpeton Oyate Tribal Code Chapter 73: “Cultural Resource Protection Act” (CRPA). Research of a cultural, historic, and/or archeologic nature shall be governed by CRPA. “Cultural Research includes any endeavor, by means of investigation and study of a subject, whether to discover new or collate old facts or hypotheses on a cultural subject, an ethnographic or anthropological study, including but not limited to basic data collection, studies of or incorporating traditional knowledge or classification systems (e.g. studies of medicinal properties of plants), documentary films, archaeology, linguistics and ethno-historical accounts.” Further definition includes “undertaking or action” as limited to “any project, activity or program located on protected lands that may potentially cause effects to cultural resources, archeological resources, burial items, sacred items or spiritual sites...”

**Explanation:** LRRB reworded the first sentence to cover projects that meet both Research Office and THPO review criteria.

(e) ~~This The Code does not~~ may apply Administrative Review to non-human subject research to information gathering projects conducted by a ~~department of the Sisseton-Wahpeton Oyate if that information gathering is within the scope of that department's delegated responsibilities~~ Tribal Entities. Academic research conducted by employees of any Tribal entity, to include educational institutions, businesses, agencies and governmental subdivisions, must comply with the provisions of the Code as ~~they cannot be exempted under the guise of departmental “information gathering” or normal departmental duties~~ a researcher.

**Explanation:** Wording changed to clarify that human subject research protections oversight applies to tribal entities.

(f) This Code applies either to public health practice or activity that collects information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, or vital events such as birth or death. Additionally, any information gathered through routine public health practice must be reported to the Tribe as outlined in the Research Policies and Procedures manual.



(g) This Code applies Exempt-Limited Review to all non-human subject research practices and activities held within the Lake Traverse Reservation, and/or are about the Lake Traverse Reservation. This Code applies if identification of the reservation, whether directly or indirectly, may occur from the data collected and/or the products of the research.

**Explanation:** (f) and (g) added to confirm oversight of non-human subject research conducted by non-tribal entities.

**Title II: Definitions**

(b) "Assent" means a child's affirmative agreement to participate in research.

**Explanation:** (b) added to definitions list as it is a term pertinent to research with minors.

(c) "Authorized Officials" means the Sisseton-Wahpeton Oyate Research Specialist, the Local Research Review Board members, and the Sisseton-Wahpeton Oyate Law Enforcement when deemed necessary or the executive committee or their designee.

**Explanation:** (c) order in list changed as words are in alphabetical order. Definition reworded to align with Research Office line of authority.

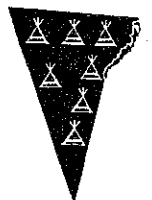
(d) "Biological Samples" means, but is not limited to, bacteria and other microorganisms, plant, animal, or any human biological materials, genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

(e) "Broad Consent" is a new term introduced by the new Common Rule, the Final Rule. Its intent is to allow researchers to obtain participant consent to allow their data to be used in unspecified secondary data studies. The Sisseton-Wahpeton Oyate has decided not to implement Broad Consent.

(f) "Common Rule"[1] means the federal regulation for human subjects protections 45 CFR Part 46 (2018-07-19), including the revisions that went into effect on January 21, 2019.

(h) Exempt-Limited Review means conducting a limited review to make the determinations required by the Common Rule to assure there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(i) Expedited Review means certain types of research involving no more than minimal risk and minor changes to research previously approved by the full committee.



(j) “Final Rule” means the Common Rule revisions that went into effect on January 21, 2019.

(k) “Human Subject” means a living individual about whom a researcher conducting research obtains data through intervention or interaction with the individual or identifiable private information.

(l) “Information Gathering” means the collection of information that occurs generally within each Tribal Program in accordance with their program mission or delegated responsibilities.

(m) “Informed Consent” means a prospective subject’s voluntary agreement, based upon full disclosure and adequate knowledge and understanding of relevant information, to participate in research or to undergo a diagnostic, therapeutic, or preventative procedure. In giving informed consent, the subject may not waive or appear to waive any legal rights to applicant researcher, the funding source, or agent. Additionally, the subject may not release or appear to release the applicant researcher, the funding source or agent from liability from negligence.

(n) “Interactions” may be communication or interpersonal contact between the investigator (or research team) and an individual. Examples include interviews, questionnaires, surveys, observations, manipulations of subject behavior, diet, or environment, physical measurements, and specimen collection.

(o) “Intervention” may be a physical procedure, educational curriculum or manipulations of the environment.

(p) “Local Research Review Board” or “LRRB” means the Sisseton-Wahpeton Oyate’s formal body whose function is to review all research proposals.

(q) “Products of Research” means publications (including but not limited to reports, studies, articles, theses, books, manuscripts, sound recordings, film and video, media interviews, and computer databases), research posters, power points, field notes, illustrations, photographs, sound recordings, collected material artifacts, replicas, and specimens, including any derivative forms they may take such as translations, and communications through the electronic media, including the internet and world-wide web.

(r) “Protocol” means the formal design or plan of a research activity. The protocol includes a description of the research design or methodology to be employed, the eligibility requirements for prospective treatment groups and controls, the treatment regimen(s), and the proposed methods of analysis that will be performed on the collected data.



(s) “Publication” is the dissemination of any information, data, or compilation, whether confidential or aggregate, by any method or media, including verbal, written or electronic communications, including periodic or final reports required by a grantor.

(t) “Public Health Practice” means the collection and analysis of identifiable health data by a public health authority for the purpose of protecting the health of a particular community.

(u) “Research” is a systematic investigation (including observational studies, interview or survey studies, group comparison studies, test development, and interventional research) designed to develop or contribute to generalizable knowledge utilizing a predetermined method for studying a specific topic, answering a specific question(s), testing a specific hypothesis(es), or developing theory.

(v) “Researcher” means any person or entity, such as a corporation, government – whether state or federal, or educational institution, which conducts research, as defined herein, within the territorial jurisdiction of the Sisseton-Wahpeton Oyate.

(w) “Reservation” means all lands within the exterior boundaries of the Sisseton-Wahpeton Oyate, which are under the jurisdiction of the Tribe, ancestral lands where the tribe holds interest, and such lands as may hereafter be obtained or added to the jurisdiction of the Tribe, regardless of whether such after-acquired lands are in fee-status or trust-status.

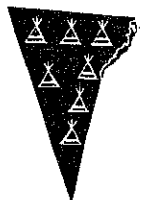
(x) “Single IRB” means the IRB of record performing review on behalf of one or more institutions. The Sisseton-Wahpeton Oyate has decided that all research protocols concerning the tribe require review per SWO LRRB policies and procedures regardless of review required by any other external research review entity.

(y) “Sisseton-Wahpeton Oyate” means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

(z) “Tribal Council” means the governing body of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

(aa) “Tribal Entity” means an arm of the Tribe formed under Tribal Law as an instrumentality, agency, unincorporated department or division, or business entity that is wholly owned by the Tribe or tribal subsidiaries, including, without limitation, a corporation or limited liability company.

(bb) “Tribal Individuals” includes Tribal members, their descendants and ancestors, and other individuals, families and people residing within the exterior boundaries of the reservation.





**Explanation:** (d), (e), (f), (h), (i), (j), (t), (x), (aa) added to definitions list as they are commonly found in research related materials. (q) – reworded to cover all types of research products and media sharing.

**77-03-03: Responsibilities of the Research Specialist**

(a) Catalogue and monitor past and current research, Sisseton-Wahpeton Oyate data.

(b) Assess the current state of data, ~~develop a data storage plan and databases.~~

(c) Develop and maintain data storage plans and databases.

(d) Develop and promulgate policies and procedures under which the Research Office and Local Research Review Board shall operate subject to the Sisseton-Wahpeton Oyate laws.

(e) Negotiate with researcher(s) for additional and/or revised procedures, methodologies, and approaches to research and/or publications as needed or recommended by the LRRB.

(f) Monitor ongoing research and enforce this Code.

(g) Establish, conduct and administer day-to-day ~~research~~ Research Office activities.

(h) Conduct public hearings if any research proposal may involve subjects of particular concern, controversy, or sensitivity to the Sisseton-Wahpeton Oyate in order to obtain feedback from Tribal Individuals.

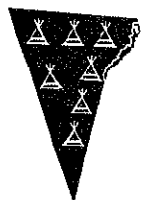
(i) Coordinate with other appropriate Sisseton-Wahpeton Oyate boards and committees and other Institutional Review Boards, cultural boards and committees as needed.

(j) Provide research information, appropriate to the audience, to the community via news articles, website updates and/or other publications as needed.

(k) Meet formally and informally with tribal leaders, tribal health program administrators and other stakeholders to ensure tribal representatives have a venue to provide information and gather input to research activities.

(l) Administer research software by developing policies and procedures for its use. Train and/or provide training manuals to LRRB members and researchers on appropriate use of the software.

(m) Assess and update Code in accordance with judicial procedures.



(n) Maintain monthly budget, perform invoicing and reporting as required.

(o) Employ and supervise other research personnel as required.

**Explanation:** (a) Shortened sentence, as it was too wordy. Determined current (b) is two separate duties so list letters change with the addition of a letter. (c) Wording added for clarification of duty. (g) Research Specialist is not a researcher

#### **77-03-05: Research Proposal Packet**

Prior to undertaking any research within the jurisdiction of the Lake Traverse reservation-Reservation and the scope of this code, Researcher must submit their research proposal and accompanying documents to the Research Office for review and approval by the Local Research Review Board.

**Explanation:** Capitalized reservation as its part of name.

#### **77-03-06: Research Permit**

Upon LRRB approval, all persons conducting research shall keep their research permit in their possession at all times. Use of the research permit constitutes an agreement by the researcher to submit to the jurisdiction and authority of this Code and the policies and procedures of the Research Office and does not imply endorsement of the results or products resulting from the study. The permit must be produced for inspection or surrendered upon demand by authorized officials.

**Explanation:** added statement clarifies that permit does not mean tribe endorses the researchers work.

#### **77-03-07: Exemptions**

The Research Specialist will review and provide a determination prior to commencement of the project, including:

- (a) Protocols determined exempt by an outside IRB or expected to meet exempt criteria according to the Common Rule, will complete an Exempt-Limited Review application.
- (b) Studies, data collection, and evaluation projects managed by Tribal entities.

**Explanation:** Added Exemptions section added in before Administrative Fees section, changing the section number.

#### **77-03-08: Administrative Fees**

The Research Office may assess reasonable costs associated with the review of proposals and other materials ~~including the hire of consultants as needed; any.~~ Any monies generated are for the exclusive use of the administration of this Code. Administrative fees are subject to change and are set forth in the Research Policies and Procedure ~~procedure-manual~~.



**Explanation:** Removed wording in Administrative Fees section, as it is unnecessary in the Codes. Adding Research Policies and Procedures manual specifies where fees are found.

#### 77-04-01: Local Research Review Board Duties and Responsibilities

There is hereby established a Sisseton-Wahpeton Oyate Local Research Review Board (“LRRB”), which shall be comprised of a minimum of five (5) individuals, ~~selected for their interest and/or expertise in research, tasked~~ with the following duties and responsibilities:

- (a) Review all ~~proposals for research proposed~~, to be conducted on the Lake Traverse Reservation that is within the scope and jurisdiction of this Code, ~~and grant approvals for these projects which are consistent with the terms and intent of this Code to proceed with said projects.~~
- (b) Approve or disapprove research projects that are consistent with the terms and intent of this Code, with or without changes prior to implementation to proceed with said projects and any research proposals that the Tribe requires to have more than a single IRB review.
- (c) Suggest additional and/or revised procedures, methodologies, and approaches, and language to research protocols and/or publications products.
- (d) Coordinate, when appropriate, with any other department or agency to ensure that the interests of ~~affected~~ Tribal programs, departments, and members are protected.
- (e) Coordinate and interact with the researcher(s) in order to ensure that the Tribe’s control of all aspects of the research process, and the Tribe’s ownership of data and information generated by such research are protected, including but not limited to any secondary data use or protocols.
- (f) Review and grant approval of any ~~Publications and Products of Research, including thesis, dissertations, and abstracts, research products~~ prior to publication or presentation.
- (g) Revoke or suspend research approvals and permits should a permit holder engage in disallowed activities, fail to abide by the terms of the permit, commit fraud or misrepresentation, provide incorrect statements in the application process, or engage in activities prohibited by this Code or any other Tribal law or resolution.

**Explanation:** Wording changed for further clarification of board duties and responsibilities.



**77-04-02: Local Research Review Board Purposes**

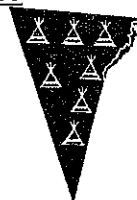
The Local Research Review Board will assure that research and publication ~~activities-products~~ of research meet the following criteria:

- (a) Are consistent with the goals, ~~resource development, and objectives~~ Constitution and By-Laws of the Sisseton-Wahpeton Oyate, including but not limited to, Article VII – POWERS, §1, *“(h) To promote public health, education, charity, and other services as may contribute to the social advancement of the members . . . .”*, as well as to the mission, vision, and social values and practices derived from its sovereign duties and responsibilities.
- (b) ~~Do~~ Will not endanger or diminish the well-being of individuals, communities, properties, or resources (physical, intellectual, or cultural), public image, or social advancement of the Lake Traverse Reservation.
- (c) Requires informed consent ~~or~~ and assent (when applicable) by all affected individuals or their legal representatives. Are relevant, sensitive, and responsive (culturally and socially) to the Sisseton-Wahpeton Oyate research and data-collection priorities and are appropriate clinically, technically, epidemiologically and statistically.
- (d) ~~Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.~~
- (e) Presents only reasonable risks in relation to anticipated benefits for the Sisseton-Wahpeton Oyate.

**Explanation:** Wording added to specify all-encompassing purposes of the board.

**77-04-03: Local Research Review Board (LRRB) Conflict of Interest**

- (a) Persons. No LRRB Mmember shall participate directly or indirectly in the administration, review, and/or approval of a research project or the selection of a paid expert consultant if an actual or foreseeable conflict would be involved. LRRB Mmembers are expected to self-regulate and disclose, not only any relationships explicitly outlined herein, but also any informal personal relationships that may interfere with the member's ability to objectively carry out their duties. Such conflict would arise when a financial or in-kind interest would be gained through the research project or expert consultation in the form of goods, commodities, or services, or professional advancement by:
  - 1) The LRRB Mmember
  - 2) The LRRB Mmember's spouse, child, parent, sibling, grandparent, grandchild, including corresponding in-laws or step-relation close relatives.
  - 3) The LRRB Mmember's business partner.



- 4) An organization which employs, is negotiating to employ, or has any arrangement concerning prospective employment of any of the above persons.
  - 5) And other circumstances that may affect objectivity.
- (b) Disclosure. When there is an actual or foreseeable conflict under 77-04-03(a), the LRRB Mmember must disclose the conflict in writing to the Research Specialist as soon as the fact is known to the LRRB Mmember.
- (c) Resolution. When a conflict has been confirmed by the LRRB, the LRRB may do the following to resolve the conflict:
- 1) The LRRB may waive the conflict if there are valid reasons; in which case the waiver must be in writing, stating the reason for such a waiver; or
  - 2) Request that the conflicted LRRB Mmember recuse himself/herself from the administration, review and/or approval of the research project ~~or the selection of a paid expert consultant.~~

**Explanation:** Wording changed to add more clarity to conflict of interest situations and proceedings.

#### **77-04-04: Local Research Review Board (LRRB) Appeals Process**

~~Researchers who are denied a~~ A one-time appeal for reconsideration may be requested from the LRRB when a research permit, or have had their research permit has been denied, revoked, or suspended may request a one-time appeal for reconsideration.

- (a) ~~Researchers must submit their~~ The request must be submitted in writing to the Research Office within thirty (30) days after receiving a notification of a denial decision or revocation/suspension.
- (b) Researcher must show good cause for the reconsideration within their appeal request. The request for reconsideration shall be deemed to have shown good cause if it:
  - 1) Presents significant relevant information not previously considered by the LRRB;
  - 2) Demonstrates that significant changes have occurred in the factors or circumstances ~~considered by the LRRB~~ considered when in-reaching its decision; or
  - 3) Demonstrates that the LRRB failed to follow its adopted procedures in reaching its decisions.
- (c) Reconsideration by the LRRB shall be conducted within thirty (30) days after receipt of the appeal request. The LRRB shall notify the appellant of the meeting time and date for reconsideration. ~~and~~ The appellant has the opportunity to be heard.
- (d) All appeal decisions made by the LRRB are final.



**Explanation:** Wording added to specify appeal reconsideration processes.

**77-04-05: Exemptions**

The Local Research Review Board will review all exemptions to the permit process established herein prior to commencement of the research project, including:

- (a) Exempt-Limited Review applications submitted in accordance with requirements of the SWO Research Office from researchers with protocols determined exempt by an outside IRB or who expect their protocol to meet exempt criteria according to the Common Rule.
- (b) Studies, data collection, and evaluation projects managed by Tribal entities who request administrative review services when required to submit official documentation stating that their study is exempt and/or for those wanting to confirm whether a study meets exempt criteria.

**Explanation:** Exemption section added to Codes.

**77-05-01: Ownership of Property**

- (a) Sisseton-Wahpeton Oyate shall retain all ownership, property, trademark, copyright, and other traditional indigenous intellectual property rights to cultural, linguistic, and historic information that is not the intellectual property of the Researcher.
- (b) Researcher shall credit Sisseton-Wahpeton Oyate, when applicable, as the appropriate source of all information used to develop their intellectual property.
- (c) Individuals on whom research will be conducted have the right to their own individual information and intellectual property that is provided to the Researcher. The statement of rights shall be in plain language. The Researcher shall provide Sisseton-Wahpeton Oyate and each individual with a statement of the individual's rights as it pertains to the information collected from the individual. Individuals retain the right to cease involvement in any research at any time.

**Explanation:** added definitive wording to (a) and (c).

**77-05-02: Copyrighted Works**

- (a) Use of Sisseton-Wahpeton Oyate's copyrighted works such as literary works, musical works – including any accompanying words, dramatic works, including any accompanying music, pantomimes, choreography, pictorial, graphic, audiovisual, architectural, motion pictures and sculptural works and sound recordings – shall be granted on a case-by-case basis.



**Explanation:** Removed unnecessary wording.

**77-05-03: Trademark**

Use of Sisseton-Wahpeton Oyate's trademark(s) that identifies the Sisseton-Wahpeton Oyate as the source may be granted on a case-by-case basis. Examples include, but are not limited to, such as words, phrases, symbols or designs, or a combination of words, phrases, symbols or designs, that identifies the Sisseton-Wahpeton Oyate as the source may be granted on a case-by-case basis.

**Explanation:** Reworded for clarity.

**77-05-04: Rights of Publicity and Rights of Privacy**

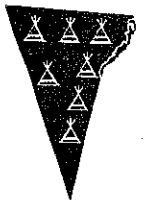
All individuals retain Rights of Publicity and Rights of Privacy to the highest extent afforded by this code or applicable tribal, state or federal law. Individuals on whom research will be conducted have the right to control their own image – including, but not limited to sketches, electronic imagery or film, voice recordings and/or video recordings, ~~to~~ Controls shall extend to a period of ten (10) years after their death unless explicitly authorized in writing.

**Explanation:** Changed wording to divide into separate sentences.

**77-05-05: Biological Samples**

Any researcher who seeks to collect, acquire, or analyze any biological samples must agree and abide by the following conditions with regard to research with biological materials:

- (a) The Tribe may, at any time, decide to withdraw from the research project, or any portion thereof, and request the return of all biological samples. The researcher, and any other parties, must comply.
- (b) Upon completion of the research project, or termination or cancellation of the project at any time prior to completion, the biological samples must be completely and fully returned to the possession of the Tribe.
- (c) No biological samples from this study may be released to, or used by, any other researcher(s), research institution, or any other entity, whether public or private, without the prior and fully-informed written approval of the Tribe.
- (d) If the Tribe permits any biological samples to be stored in any other locations, the researcher shall maintain at all times a complete list thereof. The list shall include a description of the sample or data, source, specific use or purpose of each item, responsible person(s) at the location, and where the item is housed (e.g., in a "gene bank" or on a specific computer). Secondary use of the samples or data are deemed new research studies and, therefore, the tribe requires a new protocol to be submitted for vetting.



- (e) Any situation where biological samples will leave the possession or control of the researcher will require a separate agreement between the Tribe and the external party in accordance with this Act.
- (f) No entity may seek to patent or commercialize any biological materials obtained from the Tribe, from the Tribe's jurisdiction, or under the authority of the Tribe. This includes genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

**Explanation:** Added Biological Samples section to Codes.

**77-06-02: Remedies**

When it appears that the Researcher or other person or entity has violated the provisions of this Code or the terms of the permit, the Research Office may, ~~on its own initiative with the concurrence of the Tribal Executive Committee,~~ petition the Tribal Court for the commencement of injunctive and equitable relief through Sisseton-Wahpeton Oyate civil proceedings.

**Explanation:** Wording added to show line of authority per Codes of law enforcement.

**77-06-03: Penalties**

~~If the Court, after a hearing, finds that this Code has been violated, the following penalties may apply~~After notice and an opportunity to be heard, any person found by the Tribal Court to have violated this Code may be subjected to the following civil penalties:

- (a) ~~Persons conducting research in violation of any section of this Code, or any permit issued under this Code, may be assessed a civil penalty not to exceed ten-thousand dollars (\$10,000) per violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violation.~~The civil penalty shall be in addition to any other damages resulting from a violation.
- (b) Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violation.
- (c) Civil actions may commence in accordance with the Sisseton-Wahpeton Oyate Rules of Civil Procedure, SWO Code Chapter 21.
- (d) ~~Researchers in violation of this Code, or any permit issued under this Code may be banned from conducting research on the Lake Traverse Reservation.~~If a researcher is found to be in violation of this Code, in addition to monetary fines, the civil penalty of suspension, revocation, nonrenewal, or denial of the permit, as well as denial of all future permits for conducting research on the Lake Traverse Reservation, may be applied.





**Explanation:** Changed wording to align with prior code changes regarding violations. Also, to detail other possible penalties violators might incur. Split (a) into separate parts which resulted in a letter (d) part.

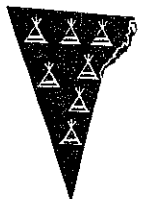
**77-06-04: Reporting**

- (a) In addition to any other remedies and penalties considered, the Sisseton-Wahpeton Oyate Research Office, may also report research misconduct to the relevant funding agencies, their affiliated institutional and professional organizations, as applicable; and public databases established for this purpose, such as the United States Department of Health and Human Services Office of Research Integrity. ~~If a judgment is entered against the persons conducting the research project subject to this Code, notice of the judgment shall be given to the project's sponsoring organization and/or funding source as well as to the professional organization or licensing agency of the person conducting the research.~~
- (b) If a judgment is entered against the persons conducting the research project subject to this Code, notice of the judgment shall be given to the project's sponsoring organization and/or funding source as well as to the professional organization or licensing agency of the person conducting the research.

**Explanation:** Separated the paragraph into sections (a) and (b).

**77-06-05: Damages**

- (a) Assessment of Actual Damages: Any person who violates any section of this Code or any permit issued under this Code shall be liable for damages to be assessed by the Sisseton-Wahpeton Oyate Tribal Court after a hearing is conducted. "Damages" shall be interpreted liberally by the Sisseton-Wahpeton Oyate Tribal Court to include, but not be limited to, the following:
- 1) Cost of recovery, restoration, and repair of research properties, cultural resources involved, and other work products;
  - 2) Enforcement costs associated with the enforcement of this Code; and
  - 3) Cost associated with the appropriate disposition of resources; and
  - 4) Such other relief that may be necessary to redress any injury suffered by the Tribe, any person, family, organization, or community resulting from the violation of this Code, and
  - 5) Attorney's fees and costs to the prevailing party.
- (b) Assessment of Treble Damages: In addition to actual damages, the Sisseton-Wahpeton Oyate Tribal Court, in its discretion, may assess damages of up to three times the amount of actual damages.



- (c) The researcher's funding source may be enjoined from any further research activities.
- (d) The Tribe may report the researcher and/or their funding source's action to other tribes.

**Explanation:** Wording added to address the seriousness that some damages may have on the tribe and researcher.

**77-06-07: Seizure of Security**

- (b) The seized property ~~seized~~ shall be released to the owner upon timely payment of any related civil assessments.

**Explanation:** Wording placement change.

**77-07-03: Construction**

This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Resolutions, and Regulations or of the Sisseton-Wahpeton Oyate.

**Explanation:** Fixed word error from "or" to "of".

**77-07-04: Amendment**

This Code may be amended only upon an affirmative vote of a majority of the Sisseton-Wahpeton Oyate Tribal Council ~~of the Sisseton-Wahpeton Oyate~~.

**Explanation:** Rearranged placement of wording.

**WHEREAS,** several sections were amended for grammatical and formatting purposes. However, substantive section changes are identified in this Resolution.

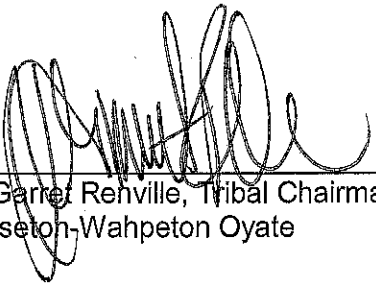
**NOW, THEREFORE BE IT RESOLVED,** That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby state that all amended sections are available through the Tribal Secretary's office and is attached to this Resolution; and

**FINALLY, BE IT RESOLVED,** That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby adopts the amendments to Chapter 77 Research Code.



## CERTIFICATION


We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 9 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, January 15, 2025, by a vote of 16 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.



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J. Garret Renville, Tribal Chairman  
Sisseton-Wahpeton Oyate

ATTEST.



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Curtis Bissonette, Tribal Secretary  
Sisseton-Wahpeton Oyate

