

**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 possesses the inherent sovereign authority to enact and enforce 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 conducted on the Lake Traverse Reservation unless specifically excluded in this section.
- (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 does not apply to research or surveys 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) This Code does not apply to information gathering conducted by a department of the Sisseton-Wahpeton Oyate if that information gathering is within the scope of that department's delegated responsibilities. However, academic research conducted by employees of any Tribal entity, to include educational institutions, businesses, agencies and governmental subdivisions, must comply with the provisions of this Code as they cannot be exempted under the guise of departmental "information gathering" or normal departmental duties.

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) "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.
- (c) "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.
- (d) "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.
- (e) "Information Gathering" means the collection of information that occurs generally within each Tribal Program in accordance with their program mission or delegated responsibilities.
- (f) "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.
- (g) "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.
- (h) “Intervention” may be a physical procedure, educational curriculum or manipulations of the environment.
 - (i) “Local Research Review Board” or “LRRB” means the Sisseton-Wahpeton Oyate’s formal body whose function is to review all research proposals.
 - (j) “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), 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.
 - (k) “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.
 - (l) “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.
 - (m) “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.
 - (n) “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.
 - (o) “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.
 - (p) “Sisseton-Wahpeton Oyate” means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

- (q) “Tribal Council” means the governing body of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
- (r) “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.
- (b) Assess the current state of data, develop a data storage plan and databases.
- (c) Develop and promulgate policies and procedures under which the Research Office and Local Research Review Board shall operate subject to the laws of the Tribe.
- (d) 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.
- (e) Monitor ongoing research and enforce this Code.
- (f) Establish, conduct and administer day-to-day research activities.
- (g) 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.
- (h) Coordinate with other appropriate Sisseton-Wahpeton Oyate boards and committees and other Institutional Review Boards, cultural boards and committees as needed.
 - (i) Provide research information, appropriate to the audience, to the community via news articles, website updates and/or other publications as needed.
 - (j) 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.
 - (k) 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.
 - (l) Assess and update Code in accordance with judicial procedures.
 - (m) Maintain monthly budget, perform invoicing and reporting as required.
 - (n) 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. The permit must be produced for inspection or surrendered upon demand by authorized officials.

77-03-07: 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 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 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, selected for their interest and/or expertise in research, tasked with the following duties and responsibilities:

- (a) Review all proposals for research, to be conducted on the Lake Traverse Reservation within the scope and jurisdiction of this Code, and grant approvals for those projects which are consistent with the terms and intent of this Code to proceed with said projects.
- (b) Suggest additional and/or revised procedures, methodologies, and approaches to research and/or publications.
- (c) Coordinate, when appropriate, with any other department or agency to ensure that the interests of affected Tribal programs, departments, and members are protected.
- (d) Coordinate and interact with the researcher(s) in order to ensure the Tribe’s control of the research process, and the Tribe’s ownership of data and information generated by such research are protected.
- (e) Review and grant approval of any Publications and Products of Research, including thesis, dissertations and abstracts, prior to publication.

- (f) 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 publication activities meet the following criteria:

- (a) Are consistent with the goals, resource development, and objectives of the Sisseton-Wahpeton Oyate.
- (b) Do not endanger the well-being of individuals, communities, properties or resources of the Lake Traverse Reservation.
- (c) Require informed consent of all affected individuals or their legal representatives.
- (d) Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.
- (e) Present only reasonable risks in relation to anticipated benefits.

77-04-03: Local Research Review Board 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-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 in the form of goods, commodities or services in the research project or the expert consultation is held by:
 - 1) The LRRB Member.
 - 2) The LRRB Member's spouse, child, parent, sibling, grandparent, grandchild, including corresponding in-laws or step-relation.
 - 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.

- (b) Disclosure. When there is an actual or foreseeable conflict under 77-04-03(a), the LRRB Member must disclose the conflict in writing 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; waiver must be in writing stating the reason for such a waiver; or
 - 2) Request the conflicted LRRB Member to recuse himself/herself from the administration, review and/or approval of the research project or the selection of a paid expert consultant.

77-04-04: Local Research Review Board Appeals Process

Researchers who are denied a research permit, or have had their research permit revoked or suspended, may request a one-time appeal for reconsideration.

- (a) Researcher must submit their request in writing to the Research Office within thirty (30) days after 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 in 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, and the appellant has the opportunity to be heard.
- (d) All appeal decisions made by the LRRB are final.

Title V: Protection of Rights

77-05-01: Ownership of Property

- (a) Sisseton-Wahpeton Oyate shall retain all ownership, property, trademark, copyright, and other 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 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 and the statement of rights shall be in plain language. 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 – 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.
- (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) 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.

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 extend to a period of ten (10) years after their death unless explicitly authorized in writing.

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, on its own initiative, petition the Tribal Court for the commencement of injunctive and equitable relief through Sisseton-Wahpeton Oyate civil proceedings.

77-06-03: Penalties

If the Court, after a hearing, finds that this Code has been violated, the following penalties may apply:

- (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.
- (b) Civil actions may commence in accordance with the Sisseton-Wahpeton Oyate Rules of Civil Procedure, SWO Code Chapter 21.
- (c) Researchers in violation of this Code, or any permit issued under this Code may be banned from conducting research on the Lake Traverse Reservation.

77-06-04: Reporting

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; as well as 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.

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 restoration and repair;
 - 2) Enforcement costs associated with the enforcement of this Code; and
 - 3) Cost associated with the appropriate disposition of resources.
- (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.

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 property seized 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 or the Sisseton-Wahpeton Oyate.

77-07-04: Amendment

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

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.