

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Non-disciplinary Restrictions to Mitigate Direct Threats to the Safety of Affected Persons or Others

NUMBER: 3:20

Institutions may impose non-disciplinary restrictions on students experiencing mental disorders that cause, or threaten to cause, behavior that directly threatens their safety or that of others.

1. Institutions may impose non-disciplinary restrictions in an effort to mitigate direct threats to the safety of students or others where the threatening conduct manifests recognized mental disorders described in the current American Psychiatric Association Diagnostic Manual.
2. Institutions may impose restrictions under this policy only after obtaining an objective, individualized medical or psychological assessment of the affected student by a licensed physician, psychiatrist or psychologist.
3. If in the judgment of the licensed physician, psychiatrist or psychologist, the nature of the disorder, its duration and the severity of its effects present significant, imminent risks of harm to the affected student or to others, an institution may impose restrictions that the licensed physician, psychiatrist or psychologist confirms are likely to be effective in eliminating or reducing the risks to acceptable levels.
4. Where the risks cannot be eliminated or reduced to an acceptable level through reasonable lesser measures, the institution may administratively withdraw the affected student.
5. The Senior Student Affairs Officer shall assign an institutional officer to be responsible for assembling the facts known to the institution, for securing, at institutional expense, the assistance of a licensed physician, psychiatrist or psychologist to evaluate the available information, for requesting that the affected student submit to an evaluation performed at institutional expense by a licensed physician, psychiatrist or psychologist selected by the institution, for formulating restrictions to mitigate the identified risks, for obtaining the opinion of the licensed physician, psychiatrist or psychologist whether the restrictions are likely to be effective in eliminating or reducing the risks to acceptable levels, and for presenting the facts and recommendations to a review panel charged with determining whether non-disciplinary restrictions may be necessary to eliminate or to reduce the threat to the safety of the student or of others.

- A. If the affected student declines to be examined by the licensed physician, psychiatrist or psychologist retained by the institution, the institutional officer shall request that the student authorize the student's treating physician, psychiatrist or psychologist to advise the institution about the student's mental state.
 - B. If the affected student will neither submit to examination nor permit a treating physician, psychiatrist or psychologist to advise the institution, the institutional officer shall ask the retained physician, psychiatrist or psychologist to provide advice based upon the information available to the institution.
6. The Senior Student Affairs Officer may impose interim non-disciplinary restrictions, up to or including administrative suspensions, where there appears to be a direct threat to the safety of the affected student or others.
7. The Senior Student Affairs Officer shall convene a panel of three persons to consider whether imposition of non-disciplinary restrictions may be necessary. The chair of the panel shall have a mental health background, but shall not have a patient or counselor relationship with the student.
8. The review panel will assemble promptly, after notifying the affected student that it will consider imposing non-disciplinary restrictions and providing the student an opportunity to attend the open portion of the panel meeting and to address the panel. Where an interim non-disciplinary suspension has been imposed, the review panel will convene within 72 hours of that action.
9. The institutional officer designated pursuant to § 5, above, shall present to the review panel the information that the institution believes warrants imposition of non-disciplinary restrictions and shall present the medical or psychological recommendations. The affected student will have the opportunity to be present during such presentations, to ask questions and to present additional facts or medical or psychological opinions. The affected student may be accompanied by a representative of the student's choice, who may advise the student, but who shall not speak on the student's behalf.
10. The open portion of the panel review is not a contested case and will not be conducted pursuant to rules of civil procedure or according to rules of evidence.
11. The review panel will retire to deliberate in private, and it will issue written findings and recommendations to the Senior Student Affairs Officer.
12. If the review panel recommends restrictions, the Senior Student Affairs Officer may impose the recommended non-disciplinary restrictions.
13. If the restrictions include a non-disciplinary administrative suspension, provision shall be made to allow the affected student to reapply for admission once the student is able to establish that the student no longer poses a threat of harm to himself, herself or others. A student who has been withdrawn administratively under this policy may also be restricted

from communicating with faculty, staff or other students, using institutional communications systems, entering institutional grounds or facilities or attending institutional events.

14. Students may appeal decisions taken under this policy to the institutional Chief Academic Officer. Appeals are limited to the questions:

- A. Whether restrictions were imposed without providing the student notice of the opportunity to be present during review panel meetings, to ask questions, to present additional facts or medical opinions and to do so with the advice of a representative of the student's choice;
- B. Whether restrictions were imposed without providing the student opportunity to be present during review panel meetings, to ask questions, to present additional facts or medical opinions and to do so with the advice of a representative of the student's choice;
- C. Whether restrictions were based upon an objective, individualized assessment of the student's mental health; or
- D. Whether restrictions were based upon the opinion of a licensed physician, psychiatrist or psychologist to the effect:
 - 1). that the student suffered a psychiatric mental disorders described in the current American Psychiatric Association Diagnostic Manual;
 - 2). that, given the nature of the disorder, its duration and the severity of its effects, there is a significant risk of harm to the affected student or to others; and
 - 3). that the restrictions were likely to be effective in eliminating or reducing the risks to acceptable levels.

15. The institutional Chief Academic Officer shall review the materials assembled by the panel to determine whether its findings and recommended restrictions were based upon substantial evidence.

- A. If the Chief Academic Officer concludes that findings and recommended restrictions were based upon substantial evidence, the Chief Academic Officer shall inform the student that the appeal has been denied.
- B. If the Chief Academic Officer concludes that findings and recommended restrictions were not based upon substantial evidence, the Chief Academic Officer shall require that a new review panel be constituted and that the matters be considered anew, with findings and recommendations being forwarded to the Chief Academic Officer for implementation.

16. After non-disciplinary restrictions have taken effect, a student may request that restrictions be modified or lifted, or, in the case of non-disciplinary administrative suspensions, they may request readmission. A student making such requests shall be responsible for providing the institution with competent medical or psychological opinion from a licensed physician, psychiatrist or psychologist to show that the student no longer poses threats of harm to himself, herself or others. Upon receipt of such requests and supporting documentation, the Senior Student Affairs Officer shall tender the same to the institutional officer designated in § 5 and shall reconvene the review panel. The requested modifications or removal or readmission shall be reviewed through the same procedures as were employed when the non-disciplinary restrictions were originally imposed.

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