SUBJECT: Service and Emotional Support Animal Policy (Updated)

During the May and June 2011 SAC meetings, representatives discussed a variety of issues that warranted a review of existing Board of Regents policy as it relates to emotional support and service animal accommodations. Emotional support animals are excluded in the Americans with Disabilities Act (ADA) which limits service animals to dogs; however, emotional support animals are not excluded in the Fair Housing Act (FHA.) Campus representatives noted that with the growing number of multi-resident/apartment style facilities, it is likely that students will begin to make requests to have emotional support animals be allowed in their apartments. Restrictions on Animals/Pets are included in Board of Regents Policy 4:41 Disruption of Workplace Setting (http://www.sdbor.edu/policy/4-Personnel/documents/4-41.pdf) which seeks to define service animals as any animal trained to assist people with disabilities in the activities of normal living. Prior to September 2010, the Americans with Disabilities Act (ADA) definition of service animal was:

any animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are hearing impaired to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Modifications have recently been applied to the ADA Title II rules which have now further expanded the definition of service animal to include:

any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure,

(Continued)
alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Furthermore, updated ADA rules provide additional guidance for the accommodations that must be made for service animals by extending the accommodations to include miniature horses. § 35.136 (i) Miniature Horses indicates that:

1) **Reasonable modifications.** A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

2) **Assessment factors.** In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—
   i. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
   ii. Whether the handler has sufficient control of the miniature horse;
   iii. Whether the miniature horse is housebroken; and
   iv. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

3) **Other requirements.** Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

Modifications have been made to BOR Policy 4:41 to reflect this updated ADA definition for service animals. SAC representatives noted the difficulty associated with dealing with requests for service and emotional support animals indicating that additional clarity may be needed in the Board of Regents policy to denote the distinctions between these two federal classifications (see Attachment I). To address this concern, a review was conducted of Federal FHA requirements as well as institutional policies that seek to provide guidelines for both service and emotional support animals. Modifications have now also been included in BOR Policy 4:41 to provide distinctions between these two animal classifications.

SAC representatives are asked to review these final revisions one last time before they are forwarded along to the Board of Regents for approval during the December 2011 meeting.
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Disruption of Workplace Setting

NUMBER: 4:41

I. Preamble
The Board of Regents strives to attract the best and the brightest, and to encourage the pursuit of higher education among aspiring students, accomplished teachers and researchers, and diligent administrators. As part of this education mission, the Regental system sponsors many recruiting activities and welcomes young children and families to many special events. However, in consideration of safety and in order to create an environment most conducive to learning and efficient to work activities, children, family, pets (other than service dogs/miniature horses and emotional support animals as defined below), and other non-work related individuals are prohibited from routinely being brought to the workplace.

II. Applicability
A. Applicable Persons & Facilities
1. This policy applies to employees and persons who visit or participate in classes, programs, events, or other activities who may wish to bring dependent children, family, pets or others to the workplace.
2. This policy does not apply to approved institutional programs that involve children, including designated research programs with child subjects, youth camps hosted at any of the Regental institutions, childcare services offered in childcare facilities, or an occasional brief visit.
3. This policy will not apply to school sponsored activities or special events that are designed to promote interaction between the community, our staff members, their families, and our students.

B. Service Dogs and Miniature Horses
1. Service dogs and miniature horses are defined as dogs or miniature horses trained to assist people with disabilities in the activities of normal living.
2. The Americans with Disabilities Act (ADA) definition of service animals is "any animal dog or miniature horse individually trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, a

(Continued)
physical, sensory, psychiatric, intellectual, or other mental disabilities. Other species, whether wild or domestic, trained or untrained, are not service animals for the purpose of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting guiding individuals with impaired vision—those who are blind or have low vision with navigation and other tasks, alerting individuals who are hearing impaired deaf or hard of hearing to intruders the presence of people or sounds, providing minimal protection non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors or fetching dropped items. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”

3. Areas Off Limits to Service Dogs and Horses
   a. The institution may prohibit the use of service animals in certain locations due to health and safety restrictions (e.g. where the animals may be in danger, or where their use may compromise the integrity of research). Restricted areas may include, but are not limited to, the following areas: custodial closets, boiler rooms, facility equipment rooms, research laboratories, classrooms with research/demonstration animals, areas where protective clothing is necessary, wood and metal shops, motor pools, swimming pools, and rooms with heavy machinery.
   b. Exceptions to restricted areas may be granted on a case-by-case basis by contacting the Office of Disability Services and the appropriate department representative. However, the person directing the restricted area has the final decision.

C. Emotional Support Animals.
   1. Emotional support animals include any animal that does not meet the definition of a service dog/horse that is prescribed to an individual with a disability by a healthcare or mental health professional.
   2. Such animals are selected due to their ability to play an integral part of a person’s treatment process that demonstrates a good temperament and reliable, predictable behavior. An emotional support animal does not accompany a person with a disability at all times; however, they may be incorporated into a treatment process to assist in alleviating the symptoms of that individual’s disability. This treatment occurs within the person’s residence and therefore may be considered for access to university residence facilities.
   3. In order to qualify for a reasonable accommodation under FHA, § 504, an individual must meet the statutory definition of having a “disability.” The statute recognizes three broad categories of disabilities:
a. A physical or mental impairment that substantially limits one or more major life activities (such as walking, seeing, working, learning, washing, dressing, etc.);
b. A record of having such an impairment; or
c. Being regarded as having such an impairment.

4. If one needs an emotional support animal to ease the symptoms of a disability (as defined in section II.3.C) he or she must request a reasonable accommodation, in writing, from the appropriate manager, residence life coordinator, or from the Office of Disability Services. Such requests should state that the individual has a disability and explain how the requested accommodation will be helpful. In addition, the individual shall include documentation from his or her service provider, such as a doctor or therapist, verifying the need for the emotional support animal. The responsibility rests with the student or employee not the institution to obtain the necessary documentation for establishing the authenticity of the emotional support animal.

III. Procedure
It is the policy of the BOR not to allow children in work areas, hallways, libraries, lounges; areas adjacent to classrooms, laboratories, or offices; or in institutional housing (except for family housing) except under brief or exceptional circumstances during the standard working hours. This policy helps to ensure safety and to prevent children from inadvertently distracting faculty, staff, and students from their work or pursuit of an education. Children and pets are expressly prohibited from entering hazardous areas at all times. Laboratories, kitchens, and workshops are examples of locations that often present hazards. Questions regarding whether an area has been deemed hazardous should be directed to the human resources department.

IV. Guidelines When Children Are Present
In those brief or exceptional circumstances where children are allowed, the following guidelines apply:

- Children must remain under direct supervision at all times.
- A child who has an illness that prevents or would prevent them from being accepted by a regular daycare provider should never be brought to campus.
- Children must not be allowed in any unsafe work area, or where their presence may put the safety of others in jeopardy including but not limited to laboratories or workshops.
- The presence of the child must not disrupt the work or learning environment or negatively impact productivity.
- Students should not bring children to class, however, if an emergency situation occurs prior approval of the faculty member must be sought before the child is brought into the classroom.
- Any request from the workplace that children be removed due to disruption must be honored immediately.
• The student or employee who brings a child to campus, regardless of permission granted, is solely responsible for the child and their safety and may not ask any other student or employee to supervise the child.

V. Responsibility
Employees and students who have both a professional responsibility to the institution and a parental/guardian responsibility for a child, may face difficult decisions when balancing the need for productivity at work or in the classroom with the need to accommodate, nurture and protect the child. If employees must attend to their children and short term childcare cannot be arranged, employees may request an alternative work schedule (BOR Policy 4:39, Alternative Work Schedule), may utilize comp-time if eligible, may request annual leave, or may request leave without pay to accommodate their children during working hours.