

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Preemptive Measures in Response to the Outbreak of Contagious Disease Posing an Imminent Threat to the Health of Institutional Students, Staff, or Visitors

NUMBER: 1:26

1. **Scope of this policy.** This policy will take effect in the event that the South Dakota Department of Health declares that an outbreak of contagious disease poses an imminent threat to the health of students, staff or visitors to an institution controlled by the Board. The policy will be construed and administered in order to protect the health and well-being of persons participating in institutional activities, whether as students, employees or visitors.
2. **Pre-emptive effect of this policy.** Subject only to limitations imposed by law, the provisions of this policy, and requirements duly established pursuant to this policy, will take precedence over any inconsistent provisions of Board or institutional policy to the contrary. All contractual rights for instruction, service or employment are deemed to be subject to pre-emption by actions taken pursuant to this policy.
3. **Cooperation with the South Dakota Department of Health.** In the event the South Dakota State Department of Health declares an outbreak of contagious disease, any institution involved shall cooperate with the Department of Health.
 - a. Where the Department of Health issues directives pursuant to the authority delegated to it by the South Dakota Legislature, the institutions will implement those directives.
 - b. To the extent permitted under law, institutions may share information with the Department of Health to assist its surveillance and investigation of infection.
 - c. Where the Department of Health recommends that the exclusion from the classroom, workplace or extracurricular activities of persons who are infected with a communicable disease or who are at risk of infections, institutions may implement those recommendations as though they were directives.
 - d. Where the Department of Health recommends vaccination of persons who are infected with a communicable disease or who are at risk of infections, institutions may condition continued attendance, residence or participation in instructional activities or continued admission to assigned workplaces upon receipt of such recommended vaccinations.

4. **Pre-emptive actions taken in reliance on reasonable medical judgment.** In the event that circumstances arise that require immediate action without time for consultation with the Department of Health, or in which the Department of Health guidance is directed primarily to individuals rather than to institutions, institutional officials may institute temporary measures to restrict students, employees or visitors from participation in institutional activities, including regularly assigned employment responsibilities, if it is determined on the basis of reasonable medical judgment that the individual's continued participation in those activities poses an unacceptable risk of contagion to others.
 - a. For purposes of this section, reasonable medical judgment must be tendered by a physician licensed to practice in South Dakota, and
 - b. It must be based upon due consideration, given the state of medical knowledge, about (i) the nature of the risk, (ii) duration of the risk, (iii) the severity of the risk, and (iv) the probabilities the disease will be transmitted and may cause substantial harm to a significant number of infected persons.

5. **Limited duty to assist persons displaced by pre-emptive response measures.** Where measures undertaken pursuant to this policy prevent students from participating in regularly assigned instructional or extracurricular activities, or employees from reporting to their regularly assigned workplaces, institutions will make reasonable efforts to provide alternative means to pursue educational or extracurricular activities or to carry out assigned employment responsibilities.
 - a. Efforts to accommodate temporary displacement caused by the outbreak of contagious disease are not subject to the standards generally applicable to reasonable accommodations required under the South Dakota Human Relations Act of 1973, the Rehabilitation Act of 1973 or the Americans with Disabilities Act. Notwithstanding the foregoing, if a condition that constitutes a handicap or disability within the meaning of state or federal law can be reasonably accommodated, reasonable accommodation shall be provided are required under law.

SOURCE: BOR, April 2006.