

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

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

NUMBER: 3:20

Institutions may impose non-disciplinary restrictions on students whose behavior 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 after obtaining an objective, individualized assessment of the affected student, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. If the assessment of affected student requires reliance on current medical knowledge, the institution will rely upon the judgment of public health authorities or other appropriately licensed professionals.
2. If the nature of the threat, its duration, and the severity of its effects present significant, imminent risks of harm to the affected student or to others that cannot be mitigated by reasonable modifications of institutional policies, procedures, or practices, an institution may impose restrictions that are likely to be effective in eliminating or reducing the risks to acceptable levels; provided that, where the institution relies upon current medical knowledge to make its assessment, it will rely upon the judgment of public health authorities or other appropriately licensed professionals when determining the effectiveness of proposed restrictions.
3. Where the risks cannot be eliminated or reduced to an acceptable level through reasonable lesser measures, the institution may administratively withdraw the affected student.
4. The Senior Student Affairs Officer shall assign an institutional officer to be responsible for assembling the facts known to the institution, for securing where necessary, at institutional expense, the assistance of public health authorities or other appropriately licensed professionals to evaluate the available information, for requesting, where appropriate, that the affected student cooperate with public health authorities or other appropriately licensed professionals who assist the institution in its assessment whether a direct threat exists, for formulating restrictions to mitigate the identified risks, for obtaining the opinion where necessary of public health authorities or other appropriately

licensed professionals 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.

If the affected student declines to cooperate with public health authorities or other appropriately licensed professionals who assist the institution in its assessment whether a direct threat exists, the institutional officer shall ask the public health authorities or other appropriately licensed professionals to provide advice based upon the information available to the institution.

5. 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.
6. 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 background that is appropriate to the assessment of the risk presented by the student's behavior.
7. 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 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.
8. The institutional officer designated pursuant to § 5 above, shall present to the review panel the information and recommendations that the institution believes warrants imposition of non-disciplinary restrictions. The affected student will have the opportunity to be present during such presentations, to ask questions and to present additional facts or, where relevant, professional opinions, formulated after an individualized assessment of the student, by public health officials or by appropriately licensed professionals of the student's choosing. 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.
9. 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.
10. The review panel will retire to deliberate in private, and neither the affected student nor the student's representative will be entitled to observe its deliberations. The review panel will issue written findings and recommendations to the Senior Student Affairs Officer.
11. If the review panel recommends restrictions, the Senior Student Affairs Officer may impose the recommended non-disciplinary restrictions.

12. 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 direct 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.
13. 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 relevant professional opinions and to do so with the advice of a representative of the student's choice;
 - B. Whether restrictions were based upon an objective, individualized assessment of the student's behavior; or
 - C. Whether restrictions were based upon reasonable judgment reliant on current medical knowledge or on the best available objective evidence to the effect:
 - 1). that the nature of the threat, its duration and the severity of its effects presented a significant risk of harm to the affected student or to others;
 - 2) that the threat could not be mitigated by reasonable modifications of institutional policies, procedures, or practices; and
 - 3). that the restrictions were likely to be effective in eliminating or reducing the risks to acceptable levels.
14. 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.

15. 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 documentation 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.

SOURCE: BOR, JUNE 2008; BOR, December 2011.