



## **ACCOMMODATION OF PERSONNEL**

**Date Approved: 2000 06 20**

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**Policy Statement:** The Hamilton-Wentworth District School Board recognizes and accepts its legal responsibilities under the Human Rights Code and Workplace Safety and Insurance Act to accommodate the individual needs of persons with a disability, as defined under the Ontario Human Rights Code, in order to assist them in performing the duties of their jobs.

**RESPONSIBILITY: Superintendent of Business**

### **OPERATING PROCEDURES:**

#### **1.0 DEFINITIONS**

##### **1.1 Reasonable Accommodation**

Both the Human Rights Commission and the Workplace Safety and Insurance Board view the Board as a single employer, and the term "reasonable" accommodation is then interpreted in a manner consistent with the resources of the entire Board. Therefore, both the employing work unit and central administration of the Board have a role in providing accommodation to employees with disabilities.

Accommodation is an adaptation or adjustment to enable the employee with the disability to perform the essential duties of the job. The first step of accommodation is to determine the essential duties of the affected employees' position (see essential duties). The period of accommodation may be temporary or long-term, depending on the particular circumstances. Accommodation means adjusting the conditions of the workplace to enable or assist an eligible employee to perform the essential duties of his/her position. It does not necessarily require that the essential duties of the job be changed to meet the requirements of the employee. Non-essential duties which cannot be performed may be adjusted or reassigned.

If an employee cannot perform the essential duties in his/her existing position, accommodation may be made in other positions. The Board will consider the following factors in this process: seniority, availability, qualifications, and legislative or contractual obligations. The nature of accommodation varies depending on the duration of the accommodation request, the applicable legislation, and the specific needs of the individual. Guidelines include the following:

- (a) Reasonable accommodation does not require the Board to create a new job in order to keep an employee employed.

- (b) Reasonable accommodation does not require the Board to remove essential duties of the job or to change the job such that it becomes a substantially different one.
- (c) Reasonable accommodation does not mean that the Board must accept sub-standard or incompetent performance. The disabled employee is only entitled to an equal opportunity to perform the job in accordance with the same standards as expected of other employees.
- (d) Reasonable accommodation respects the dignity of the disabled employee. However, the disabled employee seeking accommodation cannot necessarily expect a perfect solution.

## **1.2 Disability**

A disability or handicap, as defined in the Ontario Human Rights Code, is:

- (a) any degree of physical disability, infirmity, malformation or disfigurement, that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial device.
- (b) a condition of mental retardation or impairment
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language.
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the Workplace Safety and Insurance Act.

Sicknesses and non-work related injuries that are commonplace, widely shared or temporary in nature are not necessarily considered to be a disability for which accommodation is required.

## **1.3 Essential Duties**

Essential Duties are those which constitute the primary purpose of the job. In order to determine the essential duties of a job, consideration is given to the duties necessary to produce the final product or service required. It is usually considered an essential part of the job if a duty:

- constitutes a substantial portion of the work
- is an integral part of the job
- is not normally delegated

A detailed job description as well as a Physical Demands Analysis may be used or sought to assist in defining essential duties.

## **1.4 Undue Hardship**

The Hamilton-Wentworth District School Board has a duty to accommodate unless to do so would cause undue hardship. Undue hardship for an organization is generally related to two (2) factors: Cost and Safety.

1. Costs may amount to undue hardship if they are quantifiable and directly result in substantially decreased productivity, efficiency and effectiveness of the organization.
2. Health and safety requirements may constitute undue hardships where attempts have been made to maximize protection but the risks remaining after accommodation outweigh the benefits enhancing the employee's opportunity.

Other factors may be determined to be undue hardship (i.e. undue negative impact upon other employees) in certain situations.

## **2.0 PROCEDURES**

### **2.1 *Initiation***

- 2.1.1 Employees are responsible for promptly advising management or Human Resources of any condition, illness or injury interfering with their ability to attend at work or perform regular duties. Failure of the employee to provide timely notification and adequate information may affect the responsibility and obligations of the Board to provide accommodation.
- 2.1.2 During follow-up of employee absences, the supervisor/Principal will refer to Human Resources any employee who appears to be an appropriate candidate for accommodation.

OR

- 2.1.3 Although it is expected the employee will take primary responsibility for initiating the need for accommodation, there may be some cases where the initiation for accommodation will come from the supervisor, Human Resources, Workplace Safety and Insurance Board or another source.

### **2.2 *Notification***

- 2.2.1 Employees are required to provide all information requested (medical or otherwise) that is required by the employer to assess the issues relevant to pursuing accommodation initiatives.

*Ontario Human Rights Commission (OHRC) Guidelines on Accommodation clearly state:*

*"the person requesting accommodation must communicate his or her needs in sufficient detail and cooperate in consultations to enable the person responsible for accommodation to respond to the request."*

- 2.2.2 Human Resources plays a coordinating role:
  - to assist work units in their staffing needs
  - to ensure compliance with Collective Agreements and legislation, e.g. Workplace Safety and Insurance Act and Human Rights Code
  - to monitor on-going accommodation
  - to inform the employee of the right to contact their union/ federation, where applicable

2.2.3 When the employee has a disability, which requires job accommodation, the supervisor/principal will notify Human Resources to request advice or assistance.

### **2.3 Verification**

2.3.1 Employees must promptly respond to any inquiries, written or otherwise, relevant to identifying, assessing, implementing or altering any relevant accommodation initiative.

2.3.2 A medical doctor will assess the employee when:

- the employee is off the job due to injury/disability
- the present abilities of the employee to perform the job are not clear

The Board may request an assessment by a Board assigned physician.

2.3.3 The medical doctor must provide a certificate stating:

- whether or not the employee is able to work under modified circumstances
- *what the restrictions or limitations are*
- a timeline for being off work and/or performing modified work duties

Depending on the circumstances, the employer may require subsequent medical review to verify the need for accommodation. The Board may require an assessment by a Board appointed physician.

2.3.4 When the physical demands of the job are unclear, Human Resources will obtain a Physical Demands Analysis for that job.

2.3.5 When the employee has been off work and requires accommodation, the employee does not return to work until the medical information is submitted to the employer and job accommodation is in place.

### **2.4 Application**

2.4.1 The employee continues to play a key role and has the responsibility to continue to actively communicate and fully participate and co-operate in any of the steps or phases of the accommodation implementation.

2.4.2 The Hamilton-Wentworth District School Board and Unions and Federations (where applicable) have a joint responsibility to work out a solution with respect to accommodation.

2.4.3 Each employee with an injury or disability will be considered individually in order to determine what changes can be made to facilitate accommodation.

2.4.4 The present capabilities of the employee and the risks associated with the work are taken into account, rather than anticipating future changes in abilities or risks.

### 3.0 Implementation

Successful accommodation initiatives depend upon the cooperation, input and support of all parties; the employee, the Board and the Union or Federation (where applicable). It is expected that all three parties will work cooperatively to ensure that they successfully address accommodation issues that arise in the workplace.

#### 3.1 Uncomplicated accommodation within the work unit

RESPONSIBILITY: Work Unit Supervisor
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The supervisor has the responsibility to assess how an eligible employee can be accommodated within the work unit in the least disruptive manner

Accommodation can be accomplished within the work unit with little disruption when:

- the present abilities of the employee to perform the work are known and,
- the nature of the job accommodation is uncomplicated, and
- minor adjustments can be made to modify the employee's work plan or schedule

#### 3.2 Complex accommodation requirements

Responsibility: Work Unit Supervisor, Manager of Human Resources, Superintendent as appropriate
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When accommodation is more complicated, and cannot be easily implemented under 3.1, a consultation process involving Human Resources and Union or Federation representatives (where applicable) and the supervisor will be used to make an assessment. This may involve the purchase, from a central fund, of equipment, technology or other aids to assist the employee in performing the essential duties of their job. In addition, comparable vacant positions for which the employee is qualified and able to perform the essential duties will be considered, as long as it does not constitute a promotion. Employees assuming a "comparable" position will be paid at the rate of pay of the comparable position.

#### 3.3 When an employee cannot perform essential duties of available jobs for which they are qualified

Responsibility: Manager of Human Resources, Superintendent of Business
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3.3.1 When the disability is work-related, the employee will be referred to the Workplace Safety and Insurance Board.

3.3.2 An employer cannot accommodate an individual who is unable to perform the essential duties of a job.

#### **4.0 Conclusion**

4.1 At the end of the timeline stipulated in the supervisor's letter or in the medical certificate or sooner if the employee is able and if the doctor agrees – the employee resumes regular duties;

OR

4.2 If the employee is unable to resume normal duties at the end of the time stipulated, the employee will be asked to provide additional medical documentation. The supervisor will notify Human Resources. Depending on the circumstances, a Superintendent or designate, may request another medical review to verify the need for the continued accommodation.

4.3 If the employee is on long-term accommodation, the supervisor will follow up periodically and may request assistance from Human Resources.

4.4 Each situation is ultimately assessed in accordance with individual circumstances. These procedures are not meant to limit or restrict options and, ultimately, the accommodation of personnel will be in compliance with the legislative and collective agreement requirements which may apply from time to time.

**Reference: Ontario Human Rights Code  
Workplace Safety and Insurance Act**