



**POLICY SECTION:** Human Resources  
**SUB-SECTION:** Miscellaneous  
**POLICY NAME:** Workplace Accommodation for Employees with Disabilities  
**POLICY NO:** H.M. 38

<b>Date Approved:</b> October 27, 2010- Board	<b>Date of Next Review:</b>	<b>Dates of Amendments:</b>
<b>Cross References:</b> Ontario Human Rights Code, 1990 Workplace Safety and Insurance Act, 1997 TCDSB Human Resources Policy H.M.14, Harassment and Discrimination in the Workplace Personal Health Information Protection Act, 2004		

**Purpose:**

The Toronto Catholic District School Board is a Catholic Educational Community committed to the principle of equal opportunity. All employees of the Toronto Catholic District School Board have the right to equal treatment with respect to employment without discrimination because of a disability or a perceived disability. The right to be free from discrimination includes the right to reasonable accommodation, short of undue hardship.

It is the policy of the Toronto Catholic District School Board that accommodation, to the point of undue hardship, of every employee with a disability requiring accommodation, should be accomplished in an attempt to preserve and enhance the employee's personal dignity, self-respect and self-worth. The accommodation process is an individualized process, which takes into account all relevant circumstances.



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Notwithstanding the existence of this policy, every person has the right to seek assistance from the Ontario Human Rights Tribunal or the Workplace Safety and Insurance Board.

**Scope and Responsibility:**

**This policy extends to all Board employees. The Human Resources department is responsible for this policy.**

Successful accommodation initiatives depend upon the cooperation, input and support of all parties; the employee, the Board and the Union or Association (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.

**Alignment with MYSP:**

**Living Our Catholic values**

**Strengthening Public Confidence**

**Inspiring and Motivating Employees**

**Financial Impact:**

**Accommodation of disabled employees to the point of undue hardship will potentially have a significant financial impact on the board.**



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### **Legal Impact:**

**The Ontario Human Rights Code requires that every person who is an employee has a right to freedom from discrimination in the workplace by his or her employer. A finding of a failure to accommodate will have a significant legal and potential financial impact.**

### **Policy:**

1. The Toronto Catholic District School Board has the duty to accommodate unless to do so would cause undue hardship.
2. The employee has a duty to fully cooperate with the employer in the workplace accommodation process, and such duty may include providing appropriate, current medical information identifying restrictions, and confirming a need to be accommodated, to an appropriate member of management, that may be involved in facilitating the accommodation.
3. The Toronto Catholic District School Board and its unions and professional associations have joint responsibilities to facilitate and assist in the workplace accommodation process.
4. The Toronto Catholic District School Board is required to request only that information which is necessary to facilitate a reasonable accommodation.
5. The Director of Education shall have the responsibility to initiate the development and implementation of procedures and guidelines pursuant to this policy.

### **Regulations:**

1. Accommodating the employee with a disability should be commenced by the employee through a written request for accommodation due to a disability. A disability may be temporary or long term in nature and this will be determined on a case by case basis consistent with the medical information and prognosis



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provided. Such request should be submitted to the Principal/Supervisor or directly to the Benefits Department, advising of the presence of a disability and the need for accommodation. However, there may be some cases where the initiation for accommodation will come from the immediate supervisor, Human Resources, Workplace Safety and Insurance Board or another source.

2. When the employee has a disability which requires workplace accommodation, the Principal/Supervisor shall contact the Benefits Department to request advice or assistance.
3. Once the employer receives notice that an employee with a disability requires accommodation, the employer has an obligation to receive the request and ensure sufficient information is obtained to understand the nature of the employee's disability and the associated limitations and restrictions. It is only in this way that the employer can effectively carry out its obligation to investigate and consider appropriate accommodation solutions.
4. Employees shall provide all relevant information requested by the employer to adequately assess the need for workplace accommodation. Ontario Human Rights 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."*
5. The employer must take care to limit requests for information to those reasonably related to the nature and duration of the limitations, restrictions and prognosis for recovery so as to be able to respond to the accommodation request. The Board may request additional information, professional opinions, independent medical assessments or advice from outside sources.



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Confidentiality is seen as integral to the dignity of the employee with a disability.

6. Once the limitations and abilities have been clarified, the employee, the Principal/Supervisor and the Benefits Department will discuss the possible solutions to removing barriers. In this respect the employer is obligated to make every effort short of undue hardship to accommodate the employee with a disability.
7. Notwithstanding that the primary responsibility in providing accommodation rests with the employer, a collaborative process will be undertaken to canvass appropriate accommodation. This will include the employee with a disability and his/her professional association or union, provided the employee consents to its involvement, and the Principal/Supervisor, Benefits Department and other Board staff deemed necessary in facilitating the accommodation.
8. If at any time the employee is dissatisfied with the accommodation plan and has been unable to resolve the issue through discussions with the Principal/Supervisor and the Benefits Department, he/she may submit any concerns in writing to the Superintendent of Human Resources or designate for resolution.
9. The Superintendent of Human Resources or designate shall review the letter of concern and make inquiries in order to determine whether the requirements of the Board's policy and this procedure have been met. On request of the employee, the Superintendent of Human Resources or designate will provide a decision in writing.



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## **DUTIES AND RESPONSIBILITIES IN THE ACCOMMODATION PROCESS**

10. The Employee with a disability is required to:

- a) Request accommodation of a disability from the employer;
- b) Obtain the necessary forms provided by the Board, which are to be completed by the treating physician, and returned to the Benefits Department;
- c) Participate in discussions regarding possible accommodation solutions;
- d) Answer questions or provide information regarding relevant restrictions or limitations including additional information from treating physician, where appropriate, and as needed;
- e) Cooperate with the employer on an ongoing basis to facilitate the accommodation process and provide updates as required;
- f) Provide feedback and identify progress in appropriate format and communicate any concerns or issues so that changes or adjustments can be made to support a successful completion of the return to work plan;
- g) Discuss the disability only with persons who need to know.

*NOTE: It is the right of the employee to request union/association representation at any stage during this process.*

11. Unions and Professional Associations are required to:

- a) Respond to an employee seeking support regarding a workplace accommodation;
- b) Take an active role as partners in the accommodation process provided the employee consents to its involvement.

12. The Employer is required to:

- a) Receive the employee's request to be accommodated;



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- b) Obtain relevant information to facilitate understanding of the nature of the employee's disability and the associated limitations and restrictions. Subsequent medical information may be required to verify the need for accommodation;
- c) Schedule a work accommodation meeting, if necessary, in a timely manner;
- d) Investigate and consider appropriate accommodation solutions;
- e) Maintain a record of the accommodation request and action taken;
- f) Maintain confidentiality;
- g) Limit requests for information to those related to the nature of the limitation or restriction and prognosis for recovery so as to be able to respond to the accommodation request;
- h) Determine the appropriate accommodation solution on a case by case basis;
- i) Make every effort to accommodate the employee with a disability, short of undue hardship;
- j) Ensure a collaborative process is undertaken to canvass appropriate accommodation. This will include the employee with a disability and his/her professional association or union, provided the employee consents to its involvement, and the Principal/Supervisor, Benefits Department and other Board staff deemed necessary in facilitating the accommodation. Nonetheless, the primary responsibility in providing accommodation rests with the employer;
- k) Monitor and review the workplace accommodation plan as required;
- l) Where there are discrepancies or differences in opinions around the employee's prognosis or functional abilities, the Board may request that an independent medical evaluation (I.M.E) be completed by a Board appointed physician in an attempt to resolve the issue.



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m) Initiate the duty to accommodate in situations where the employer suspects on reasonable grounds that an employee's ability to perform the essential duties of his/her job is affected due to a disability.

13. When an employee cannot perform essential duties of available jobs for which they are qualified:

- a) When the disability is work-related, the employee will be referred to the Workplace Safety and Insurance Board.
- b) An employer cannot accommodate an individual who is unable to perform the essential duties of any job.

14. Each situation is ultimately assessed in accordance with individual circumstances.

15. These procedures are not meant to limit or restrict options and, ultimately, the accommodation of personnel will be in compliance with legislation and due consideration to collective agreements.

### **Definitions:**

#### **Workplace Accommodation**

- a) An adaptation or adjustment that enables an employee with a disability to perform the essential duties of their job.
- b) A duty to accommodate on the part of the employer, short of undue hardship, to provide reasonable accommodation for the employee with a disability as defined by the Ontario Human Rights Code.
- c) A review of the current functional abilities of the employee with a disability, as outlined and supported by relevant medical documentation.
- d) A process that respects the dignity and confidentiality of the employee with a disability.





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- e) An individualized, case by case approach, in attempting to meet the restrictions and limitations of the employee with a disability.
- f) A collaborative, problem-solving process.

### **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, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (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 insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

*Note:* *Notwithstanding the above, this is not an exhaustive list of disabilities that may require accommodation.*

### **Duty to Accommodate**

Section 17 of the Ontario Human Rights Code creates an obligation to accommodate specifically under the ground of disability. The Board is legally obliged to accommodate employees with a disability to the point of undue hardship.



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All the terms used in this policy and procedures hereunder shall bear the meanings ascribed to them under the Human Rights Code as applicable. The Board reserves to itself all defenses available at law.

### **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.

### **Undue Hardship**

The Board has a duty to accommodate unless to do so would constitute undue hardship. Three factors are considered to determine undue hardship: cost, outside sources of funding, and health and safety.

1. Costs may amount to undue hardship if it is so high that it affects survival of the organization or business, or changes its essential nature. Such costs must be quantifiable and can include costs such as capital and operating costs and the cost of re-structuring.
2. Outside sources of Funding: Accommodation funds, as well as government grants or loans, can offset some costs, and should be considered in assessing undue hardship.
3. Health and Safety: consider whether any applicable health and safety requirements can be waived or modified where permitted by law, or if alternatives can be found to protect health and safety.



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### **Reasonable Accommodation**

Both the employing work unit and central administration of the Board have roles 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 their job. The first step of accommodation is to determine the essential duties of the affected employee's 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 appropriate. The nature of accommodation varies depending on the duration of the accommodation request, and the specific needs of the individual.

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: availability, qualifications and/or contractual obligations.

The Board will make every effort to provide meaningful modified work and will use the following hierarchy as a guideline to return to work plan development:

1. Pre-disability job classification with no restrictions and no accommodation
2. Pre-disability job classification with restrictions and accommodation
3. Suitable, available job classification with no training and no accommodation
4. Suitable, available job classification with training and accommodation
5. Return to work with a comparable new employer
6. Return to work with an alternate new employer



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**Evaluation and Metrics:**

**The effectiveness of the policy will be determined by measuring the following:**

- 1. Complaints or grievances brought forward to the Superintendent of Human Resources for failure to accommodate**

APPENDIX D